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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOAN D. TESCHE,
PLAINTIFF

VS

CNA INSURANCE COMPANIES, and
CONTINENTAL CASUALTY COMPANY,
DEFENDANTS

NO. 1: GV-01-0326

FILED

JAN 03 2002

PER
HARRISBURG, PA DEPUTY CLERK

TELEPHONE
DEPOSITION OF:

CHERYL SAUERHOFF

TAKEN BY:

PLAINTIFF

BEFORE:

VIRGINIA LORIA, RPR
NOTARY PUBLIC

DATE:

DECEMBER 3, 2001, 1:00 p.m.

PLACE:

KEEFER WOOD ALLEN & RAHAL LLP
210 WALNUT STREET
HARRISBURG, PENNSYLVANIA

APPEARANCES:

KEEFER WOOD ALLEN & RAHAL LLP
BY: BRADFORD DORRANCE, ESQUIRE

FOR - PLAINTIFF

CHRISTIE PARABUE MORTENSEN YOUNG - VIA TELEPHONE
BY: MICHAEL J. BURNS, ESQUIRE

FOR - DEFENDANTS

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EXHIBITSSAUERHOFF EXHIBIT NO.MARKED

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STIPULATION

It is hereby stipulated by and between counsel for the respective parties that the sealing, certification, and filing are waived; and that all objections except as to the form of the question are reserved to the time of trial.

CHERYL SAUERHOFF, called as a witness, being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DORRANCE:

Q Ms. Sauerhoff, my name is Brad Dorrance. I represent the Plaintiff in this lawsuit, Joan Tesche. Before we begin, I'd like to make sure that you understand the deposition procedure. Have you ever given a deposition before?

A Yes.

Q Approximately how many times have you given a deposition?

A Probably around 25 times.

Q So you generally understand the format?

A Yes.

1 Q Just to reaffirm that you are understanding, a
2 deposition is basically a question-and-answer session in
3 which your answers are provided under oath. If you don't
4 hear my question or if you don't understand my question,
5 please ask me to repeat it or rephrase it; and I'd be
6 happy to do so.

7 Likewise, please verbalize your answers. A nod
8 of your head or similar nonverbal answer will not suffice,
9 particularly because we are doing this by telephone.

10 A Okay.

11 Q Please wait for me to complete my questions, and
12 I'll try to wait for you to complete your answers so that
13 we don't talk over one another. Are you under any
14 medication currently?

15 A Yes.

16 Q Does it prevent your ability to understand
17 questions or to answer them truthfully?

18 A No.

19 Q Did you have any questions before we begin?

20 A No.

21 Q Pardon?

22 A No, I don't have any questions.

23 Q I'd like to ask you some preliminary questions
24 first. Since we are doing this by telephone, I think it
25

1 might be a good idea if you could copy -- do you have a
2 badge or something that shows you are a CNA employee?

3 A I have a badge, but not with me.

4 MR. DORRANCE: Okay. I was just thinking, Mike,
5 do you have any problem with just making a copy of a photo
6 -- a driver's license or a CNA employee badge just to
7 further confirm the identity of the deponent?

8 MR. BURNS: I don't know how that would confirm
9 it, Brad. But I don't think we'd have much of a problem,
10 but I don't know if it's going to confirm it or not.
11 Holly is sitting right next to her, Holly Fenlon. And
12 that's probably one of the reasons she's there so that she
13 can tell you that's Cheryl Sauerhoff.

14 MR. DORRANCE: That's all right. We'll just go
15 through the usual questions, then.

16 BY MR. DORRANCE:

17 Q Cheryl, please state your full name and address.

18 A Cheryl Sauerhoff, S-A-U-E-R-H-O-F-F, 12211 Coral
19 Reef Drive, Orlando, Florida. 32826.

20 Q Please summarize your educational background.

21 A I have a Bachelor of Arts in Criminal Justice and
22 Psychology.

23 Q And where did you receive that degree?

24 A University of Central Florida.
25

1 Q Did you receive any postgraduate training or
2 education?

3 A No.

4 Q Can you please briefly summarize your work
5 history?

6 A I've been with CNA Insurance Company since
7 December 1991. So this will be my tenth year.

8 Q Okay. What positions have you held with the
9 company?

10 A Disability claim specialist, and then appeals
11 committee member.

12 Q Is that the same position you currently hold?

13 A Yes.

14 Q Is that the same position you had as part of Joan
15 Tesche's appeal?

16 A Yes.

17 Q How long have you worked in your current
18 capacity?

19 A Four years.

20 Q What did you do for CNA before taking on your
21 current job?

22 A I was a disability claims specialist, which meant
23 that I processed long-term, short-term disability claims.

24 Q How is your current job different than that
25

1 description?

2 A I review claims independently from the claims
3 unit. So I'm not making any input or decision-making
4 process on that claim decision.

5 Q Okay. What documents did you review in
6 preparation for today's deposition?

7 A The entire claim file and the policy.

8 Q And I understand you have the entire claim file
9 in front of you?

10 A Yes.

11 MR. DORRANCE: And, Mike, we've agreed that those
12 documents will be admitted as part of the record in the
13 District Court litigation; is that correct?

14 MR. BURNS: We stipulated that the administrative
15 record as a whole will come in as authentic and as the
16 basis for any motions for some rejudgement or whatever we
17 need to proceed in the litigation.

18 MR. DORRANCE: Okay. Thank you.

19 BY MR. DORRANCE:

20 Q I'd like a little bit better understanding of the
21 procedures and criteria used in evaluating short-term and
22 long-term disability claims. Could you please briefly
23 summarize that process for me?

24 A You mean my role as a disability specialist prior
25

1 to being on the appeals committee?

2 Q Just based on your knowledge and experience,
3 generally. I'm not talking about Joan Tesche's case right
4 now, although we will go into that. I'm referring to your
5 understanding of the customary procedures and criteria
6 used in evaluating short-term and long-term disability
7 claims.

8 A When a claim is filed, usually it consists of the
9 attending physician's statement, the employer's statement,
10 and the employee's statement making a claim for disability
11 benefits.

12 The policy is reviewed to determine what
13 provision of the policy we have and any occupation period
14 and own occupation period. There's elimination periods
15 pertaining to both policies, eligibility criteria that
16 have to be met.

17 So when the claim is received, the policy is
18 reviewed, along with the initial claim information. And
19 from there, usually the disability specialist is partnered
20 with a nurse case manager in retrieving any necessary
21 medical information or supporting documentation for
22 eligibility and in supporting disability in accordance
23 with the policy.

24 Q What qualifications does the disability
25

1 specialist have?

2 MR. BURNS: I'll object to the form of the
3 question. It's rather broad because there's probably a
4 whole bunch of Disability Claim Specialists. But if there
5 are general parameters that you are aware of, Ms.
6 Sauerhoff, you can respond to that question.

7 A Well, normally, there aren't certain levels of
8 specialty. But as far as managing claims or handling
9 claims, it would be three to five years' experience with
10 claims handling. There might be some criteria for formal
11 education. I don't think you have to possess a college
12 degree. But usually experience is related.

13 Q And you also mentioned that the other person, as
14 part of the review process, is a nurse case manager. Was
15 that the phrase you described it?

16 A Correct.

17 Q And I suppose she has to be an R.N., is that
18 correct?

19 A Usually that's my understanding, that they are
20 registered nurses.

21 Q So these two individuals are the ones that make
22 the initial decision on a short- and long-term disability
23 claim?

24 A Correct.

25

1 Q And after initial decision is made, is the
2 applicant advised of the decision?

3 A Yes.

4 Q Before a decision is made, do either one of these
5 individuals ever ask the applicant to provide additional
6 information?

7 MR. BURNS: I'll object to the form of the
8 question. It's overbroad, and it may assume facts not of
9 record. But, Ms. Sauerhoff, if you understand the
10 question, you can answer it.

11 A Could you repeat the question?

12 BY MR. DORRANCE:

13 Q Yes. Again, I'm not asking about any facts of
14 record or anything related to Joan Tesche's case. I'm
15 just asking, is there a free exchange of information
16 between the CNA representatives and the applicant for
17 disability insurance before a determination is made by the
18 company?

19 MR. BURNS: Let me just object to the form of the
20 question. It's kind of leading to the extent of the use
21 of the word free, or the term free exchange.

22 MR. DORRANCE: Assume that word is removed from
23 the question.

24 MR. BURNS: Okay. Then I'll withdraw the
25

1 objection. And you can respond, Ms. Sauerhoff.

2 A Okay. Usually the claimant making the
3 application for disability is contacted either by the
4 nurse case manager or the disability specialist or both in
5 conjunction.

6 An interview is normally done explaining the
7 claim -- that that claim's been received, what information
8 may be necessary, what doctors are being contacted, or
9 gathering further information as far as what medical
10 information is available, because the attending
11 physician's statement is just a framework to work from.

12 And also, information pertaining to the policy,
13 the benefits, things of that nature are usually discussed
14 with the claimant at that time during the interview
15 process.

16 BY MR. DORRANCE:

17 Q Is medical proof of disability always required?

18 A Yes. It is based on medical evidence.

19 Q Is it based on any other criteria?

20 A Eligibility -- before you even get to a
21 disability test, you see if a person is eligible. In
22 other words, are they a correct member of the eligible
23 class, are they eligible under the policy, has the premium
24 been paid, information of that sort before you go on to
25

1 the disability portion.

2 Q When you go on to the disability portion, is
3 there anything that you look at other than medical
4 evidence of disability?

5 A We look at everything in totality. So that could
6 be information from the employer as far as the claimant's
7 work ability, information pertaining to that, how are they
8 working prior to the disability, any problems in their
9 performance. So there is a totality of information that
10 is reviewed in conjunction with the medical information.

11 Q Does the disability specialist have a checklist
12 that he or she uses in trying to consider the totality of
13 the situation?

14 A There's not a checklist to my knowledge. But
15 there is information such as your claimant interview,
16 activities of daily living, interviews with the medical
17 doctor, if necessary, interviews with the employer. They
18 normally call it, like, a three-point interview.

19 Q Is this maintained in any kind of a policy manual
20 or handbook to aid the disability specialist?

21 A Not to my knowledge.

22 Q Did you have any knowledge or familiarity with
23 the procedures followed by the nurse case manager?

24 A No. Just that they contact -- usually whatever
25

1 actions that they take are documented on the nurse case
2 database. And usually it entails calling the doctor's
3 office, gathering medical information, maybe talking to
4 the doctor personally to gather further information, and
5 then corresponding or communicating with the disability
6 specialist on the medical finding.

7 Q Is the disability specialist the employee that
8 decides the case from a vocational standpoint?

9 A I'm sorry. Could you repeat that?

10 Q Is the disability specialist the employee who is
11 responsible for deciding any vocational issues?

12 A No. They would bring that to the attention of
13 the vocational case manager with that expertise.

14 Q So there is also a vocational case manager who is
15 involved in the initial process?

16 A Not necessarily in the initial process --

17 MR. BURNS: Hold on. I'll object to the form of
18 the question just because it puts a lot of words in her
19 mouth and it could be construed as a leading question.
20 But if you understand the question, you can answer it.
21 Sorry. Go ahead.

22 A Can you repeat the question again?

23 BY MR. DORRANCE:

24 Q Maybe I'm mistaken, I had thought you said there
25

1 were two individuals primarily involved in making an
2 initial decision on disability claims. And you identified
3 them as the disability specialist and the nurse case
4 manager; is that right?

5 A That's correct.

6 Q Now, you've mentioned a third individual,
7 vocational case manager. Can you identify how that
8 individual is involved in the initial decision-making
9 process, if at all?

10 A Well, they are not normally involved in the
11 initial process unless you have a policy that speaks to
12 any occupation initially.

13 Q And perhaps we should briefly define those terms
14 as you understand them. You refer to own occ. and, I
15 believe, all occ. provisions under the policy. What is
16 your understanding of those provisions, if you have one?

17 MR. BURNS: I'll object. I think it's any
18 occupation, Brad.

19 BY MR. DORRANCE:

20 Q I'm sorry. I misspoke. Any occupation. Do you
21 have any familiarity with those terms?

22 A Yes. Well they are defined in the policy under
23 the monthly benefit -- under total disability, rather.
24 And most policies -- now the periods may vary according to
25

1 each policy.

2 Normally, the policy will pay for a certain
3 period of time while the claimant remains disabled or
4 unable to perform the substantial material duties of their
5 regular occupation. That's referred to as the own
6 occupation.

7 Then beyond that period of time, the test for
8 disability means that they must be disabled from any
9 occupation; and that's relating to the education,
10 experience. Other vocational factors are taken into
11 account for that determination.

12 Q Are those definitions standard within each of
13 CNA's policies?

14 MR. BURNS: I'll object to the form of the
15 question. But you can answer it if you understand it.

16 A Well, they are defined under total disability
17 under the policy. It will specify how the policy pays,
18 and what total disability means. And if there is a change
19 in that definition, it's explained benefits beyond the
20 period initially paid, disability means the following.

21 Q I guess what I'm trying to find out, are there
22 any variations in the definitions provided under CNA's
23 many different types of policies?

24 A My experience has been most of the policies are
25

1 very similar, but we always go to the policy in force at
2 that date of loss. We just don't make a blanket statement
3 that one policy applies to everything. So we would have
4 to relate to the policy in effect for that particular
5 claim filed.

6 Q For example, does CNA write mortgage disability
7 insurance?

8 A I have no knowledge of any mortgage disability
9 insurance.

10 Q How about insurance providing payments for a car
11 loan in the event of disability?

12 A The disability area that I work pertains to
13 short-term and long-term disability.

14 Q Is the term own occ. and the coverage provided
15 under it synonomous with short-term disability?

16 MR. BURNS: I'll object to the form of the
17 question. I don't understand the question. But if you
18 understand it, Cheryl, you can answer it.

19 A Well, I don't think I understand either.

20 MR. DORRANCE: Could you define short-term
21 disability for me, if you know?

22 MR. BURNS: For what? For what policy? I'll
23 object to the form of the question. But if you understand
24 it, Cheryl, you can answer it.

25

1 A well, my understanding was short-term disability
2 is disability relating to a short period of time. They
3 usually have a shorter elimination period. In other
4 words, a week has to be met before benefits are payable.
5 It usually pays for sometimes up to a maximum of 26 weeks,
6 13 weeks, 52 weeks, depending on the policy. But it's
7 there, like, if your sick pay has exhausted and you are
8 eligible for short-term disability, that's usually the
9 next. That policy usually goes into effect.

10 BY MR. DORRANCE:

11 Q Let's just continue on with the identification of
12 the individuals who are responsible for the initial
13 decision on a claim for disability. You started to
14 identify the vocational case manager. How is that
15 individual involved in the process, if at all?

16 A That would be up to the disability specialist and
17 the nurse case manager reviewing the file. If they feel
18 they need the expertise, in other words, if they don't
19 understand that person's occupation, or need more
20 vocational experience in understanding that, they may go
21 to the vocational case manager for that expertise.

22 Q Is there a manual, for example, the Department of
23 Labor's classification of jobs, that you use in getting a
24 better understanding of the physical requirements of a
25

1 particular job?

2 A well, there's manuals that are available, but
3 usually the disability specialist wouldn't have those
4 particular manuals. They would go to the vocational case
5 manager if they needed further experience or knowledge in
6 that area.

7 Q So does the disability specialist have any
8 discretion in identifying jobs that are potentially
9 available for an applicant for disability?

10 MR. BURNS: I'll object to the form of the
11 question, based upon personal knowledge. But if you
12 understand it, you can respond to it, Ms. Sauerhoff.

13 A well, the Vocational Case Managers are the ones
14 who identify occupation.

15 BY MR. DORRANCE:

16 Q So, if a disability specialist needs a job
17 description for a particular job, he or she would refer to
18 the vocational case manager?

19 A well, if that was felt necessary. But normally,
20 just getting back to when a claim is filed, we usually
21 will ask for the job description or job activities
22 pertaining to that particular claim.

23 Q And that would be limited to the job that the
24 claimant had at the time he or she alleged an onset of
25

1 disability; is that right?

2 A Correct.

3 Q I take it then that we are back to the initial
4 stage of the process. We are talking only about two
5 people, typically, the disability specialist and the nurse
6 case manager.

7 A Correct.

8 Q Let's assume that there has been a payment of
9 benefits under an own occ. policy. Do policies then
10 provide for additional decisions as to whether the
11 claimant continues to be disabled from any employment?

12 A Well, yes. Disability is measured throughout.
13 In other words, periodically there might be requests for
14 updates of medical conditions, response to treatment,
15 treatment plans. Because with medical technology and so
16 forth, you may not remain disabled continuously during
17 your own occupation period.

18 But if that were the case, and you were found to
19 be disabled from your own occupation and that's
20 determined, then, subsequently, you would be informed that
21 eventually your policy changes definitions of disability
22 and what further information might be necessary to
23 evaluate that.

24 Q And typically, how long are benefits provided for
25

1 own occ. disability?

2 MR. BURNS: I'm going to object to the question
3 to the extent that it's very vague in terms of typically.
4 But if you understand the question, you can respond, Ms.
5 Sauerhoff.

6 A Again, it relates to the policy that's in force
7 at that date of loss pertaining to that claimant. But the
8 24 months is the one that we see most familiar in the
9 policy. But it does vary according to policy and account.
10 BY MR. DORRANCE:

11 Q And then let's assume that the 24 months of
12 benefits have been provided to the eligible applicant.
13 Does the decision have to be made whether that applicant
14 meets the any occupation definition of disability?

15 A As you approach, there's not really any
16 particular time frame. But certainly you don't wait until
17 after the 24 months has gone by and then say, by the way,
18 we are now evaluating you for any occupation. But
19 normally you start getting some indication or evaluating
20 the claim during that process to determine is that person
21 going to remain disabled. And usually they are identified
22 of what that own occupation period is and when it ends to
23 see if they are disabled beyond that point.

24 Q And who is the individual -- or who are the
25

1 individuals by job title -- who review the decision as to
2 whether the eligible applicant continues to be eligible
3 for benefits under any occupation standard?

4 A Okay. At this point the disability specialist,
5 normally with the nurse case manager, who at that point
6 the nurse case manager will say the claimant remains
7 disabled from their own occupation, referring to
8 vocational case manager for any occupation assessment. So
9 at this point the nurse case manager usually excludes
10 themselves from the process. The disability specialist
11 then refers the case to the vocational case manager for
12 any occupation assessment.

13 Q I'm sorry. I couldn't hear all that. Why does
14 the nurse case manager exclude herself from consideration?

15 A Because at that time it now becomes a vocational
16 issue. She or he has done the medical workup, including
17 finding out what restrictions are applicable, what's the
18 medical status at that time, has already worked that
19 information out. So the nurse case manager is no longer
20 involved in an any occupation decision.

21 Q Is there any medical director that you have on
22 staff that the nurse practitioner -- I'm sorry -- the
23 nurse case manager can consult with on medical issues?

24 A We have resources, a panel of doctors that are
25

1 available, depending on the expertise that's necessary.
2 And that can be utilized by anybody within the company,
3 including a nurse case manager.

4 Q Are these salaried doctors or are they doctors
5 that have some sort of a contract arrangement with the
6 company?

7 MR. BURNS: If you know.

8 BY MR. DORRANCE:

9 Q If you know.

10 A I don't know.

11 Q who would know the answer to that question, if
12 you know?

13 A well, there is a person in charge of the peer
14 review panel for the network of doctors that are used.

15 Q And who is that individual?

16 A That would be Nancy Harper.

17 Q But that's a little bit different, is it not, a
18 peer review panel?

19 A I'm sorry. You are asking me?

20 Q Yes. I'm sorry. You referred to a panel of
21 doctors, I would call them consultants. I don't know if
22 that's the right word.

23 A Consultants would be accurate. All I know is we
24 call it peer review. But it's a variety of doctors
25

1 through a vendor resource program.

2 Q And can they be consulted at any stage of the
3 application or appeal process?

4 A Yes.

5 Q And they can be consulted by the disability
6 specialist, for example?

7 A Correct.

8 Q And they can be consulted by the nurse case
9 manager, for example?

10 A Correct.

11 Q And they can be consulted by the vocational case
12 manager, for example?

13 A Yes.

14 Q Is there anyone else that would customarily
15 consult with a panel of doctors on a disability claim?

16 MR. BURNS: I object to the form of the question
17 using the word customarily. It's a leading question.
18 It's not defined. But you can answer it, if you
19 understand it, Ms. Sauerhoff.

20 A Anybody that would have claims handling within a
21 claim that feels the need to have additional knowledge or
22 expertise in a medical field can access the peer review's
23 decision.

24 BY MR. DORRANCE:

25

1 Q You said that after a claim is handled by -- I'm
2 trying to remember how you phrased it -- at some point you
3 said it becomes a vocational issue, and I'm trying to
4 remember what you said, at what point that happens. Is
5 that after initial determination is made?

6 A Usually, after initial determination is made and
7 benefits are paid for a period of time, an any occupation
8 assessment would be conducted. We don't customarily wait
9 until the end of the 24-month period, if that were what
10 the period is.

11 Q Are there different levels to the appeals
12 process, for example, initial application followed by
13 reconsideration, followed by a final and binding
14 determination?

15 A In our appeals process, if a claim is denied or
16 terminated, the claimant is informed in writing of how to
17 exercise their appeal rights. And normally they are given
18 60 days to respond in writing and provide any additional
19 information.

20 A ten-day reconsideration is built in when the
21 claimant appeals, formally appeals. Then that information
22 be brought to the disability specialist to see if that
23 would alter the decision made. Sometimes there is further
24 information that wasn't made available at the time of the
25

1 initial decision.

2 So, if the information is reconsidered by the
3 disability claim specialist, initially, but if that
4 decision remains unchanged, the claimant's notified in
5 writing that the claim has now been forwarded on to the
6 appeals area for consideration.

7 Q So it would be fair to say there are three stages
8 to the process; the initial review and decision, that
9 would be one; the built-in ten-day reconsideration stage;
10 and finally the appeal to the -- did you say appeals
11 counsel or committee?

12 A Right, appeals committee. And that would be --
13 it's all rolled into one. Because if it's reconsidered by
14 the claims unit during that first initial ten-day period,
15 that appeal clock is still ticking at that time. But if
16 the decision is changed at that point and the claim is
17 paid, then it doesn't go any further beyond that. The
18 matter's been resolved.

19 Q And I believe you said there's an opportunity to
20 provide additional information during these stages of
21 appeal?

22 A When the claimant received their denial or
23 termination letter, the last paragraph usually informs
24 them of what their appeals process is. And if they have
25

1 additional information they wish to submit that can be
2 brought forth.

3 Q Do you rely solely on the applicant to provide
4 medical evidence of disability?

5 A Right. It would be their responsibility to
6 provide that additional information.

7 Q Do you ever seek to obtain objective proof of
8 disability from your doctor sources?

9 A There are times that we can, anybody within the
10 company can call and provide additional information or
11 request additional information to assist the claimant.

12 Q Do you ever have the claimant examined by a
13 so-called IME?

14 MR. BURNS: Never mind. Go ahead. You can
15 answer the question.

16 A We do have that opportunity. I mean, it's within
17 our policy that we have the right to have somebody
18 independently examined. And that is a call that at any
19 level of the claim can be requested.

20 BY MR. DORRANCE:

21 Q And it can be requested by the disability
22 specialist?

23 A Yes.

24 Q The nurse case manager?

25

1 A Yes.

2 Q The vocational case manager?

3 A (No response.)

4 Q I'm sorry?

5 A Yes.

6 Q Is there any other employee of the company who
7 can request an independent medical examination?

8 A I think anybody that would have working knowledge
9 of that particular file. It could be an appeal committee
10 member if it were at that level and it was felt that an
11 independent medical exam was necessary.

12 Q So the appeal committee does have the power to
13 request additional medical evidence?

14 A Yes.

15 Q Does it have the power to request additional
16 vocational evidence?

17 A Yes.

18 Q Does it have the power to ask the claimant to
19 provide additional information establishing disability?

20 A Yes.

21 Q I understand that many companies have a so-called
22 plan document governing the powers and obligations of the
23 so-called plan administrator. Are you familiar with those
24 terms?

25

1 A I'm familiar with the summary plan description,
2 or sometimes referred to as a plan document.

3 Q Are you aware of any summary plan description in
4 Joan Tesche's case?

5 A No.

6 Q It is customary for there to be a summary plan
7 description for a long-term disability claim?

8 A Usually, the employer provides some kind of
9 information to the employee on their benefits, and that's
10 normally where you would find information regarding your
11 long-term disability benefits.

12 Q In Joan Tesche's case, was CNA serving as the
13 plan administrator?

14 MR. BURNS: I'll object to that question to the
15 extent that it calls for a legal conclusion. But to the
16 extent that you understand the question, Ms. Sauerhoff,
17 you can answer it.

18 A In my understanding, we are the claims
19 administrator, and we have the policy. And that's what we
20 determine our disability decisions by.

21 BY MR. DORRANCE:

22 Q And the disability insurer, is that Continental
23 Casualty Company in Joan Tesche's case?

24 A Correct.

25

1 MR. BURNS: Just so the record's clear, its
2 Continental Casualty Company.

3 MR. DORRANCE: Oh. I said insurance, didn't I?

4 MR. BURNS: Right.

5 MR. DORRANCE: Thank you.

6 MR. BURNS: Would you agree with that, Ms.
7 Sauerhoff?

8 A Yes.

9 MR. BURNS: Thank you.

10 BY MR. DORRANCE:

11 Q Do you know whether or not there is any document
12 which gives discretion to CNA as the claims administrator
13 to determine eligibility for benefits?

14 MR. BURNS: Let me just again object to the
15 extent that it calls for a legal conclusion. But, Ms.
16 Sauerhoff, if you understand the question, you can respond
17 to it.

18 A My understanding is that information would be
19 found in the summary plan description.

20 BY MR. DORRANCE:

21 Q Are you familiar with the summary plan
22 description in Joan Tesche's case?

23 A No, I'm not.

24 Q Do you know which individual would be familiar
25

1 with that document?

2 MR. BURNS: At Continental or CNA?

3 MR. DORRANCE: At either company.

4 MR. BURNS: CNA is not a company. Go ahead, Ms.
5 Sauerhoff, you can respond to the question, if you know.

6 A My understanding would be somebody with the
7 employer that actually produces or writes the summary plan
8 description would have that information.

9 BY MR. DORRANCE:

10 Q So, in Joan Tesche's case, that would have been a
11 company formally known as AMP, A-M-P?

12 A That was the employer that she was employed with.

13 MR. DORRANCE: Mike, do you have access to that
14 document?

15 MR. BURNS: I do not have a quote summary plan
16 description, end quote, from AMP Inc., which is
17 independent from a booklet that CNA produces and gives to
18 the employer. That document is just a brief booklet. And
19 it provides -- it just covers what is in the insurance
20 policy. I think AMP is supposed to hand it out to their
21 employees, but I don't know if they do.

22 MR. DORRANCE: So you don't know of any summary
23 plan description in Joan Tesche's case?

24 MR. BURNS: I hesitate to call this a summary
25

1 plan description because I don't think, technically, from
2 a legal standpoint, it is. So the answer to that question
3 is no, I am not aware of a specific summary plan
4 description from AMP. But there is an insurance booklet
5 that the employee is supposed to get, which is produced by
6 CNA, and provided to AMP, which I have a copy of.

7 MR. DORRANCE: Would you be able to provide that
8 to me at your convenience?

9 MR. BURNS: Sure. And just so we can go forward
10 with the deposition and you don't need to come back, my
11 evaluation of it leads me to conclude that there is no
12 provision in here which would be characterized or
13 construed as a grant of discretion to Continental Casualty
14 Company or CNA with regard to evaluation plan, claims
15 under the plan.

16 MR. DORRANCE: You don't see any provision
17 vesting discretion in the claim administrator to interpret
18 the terms of the plan?

19 MR. BURNS: That's correct. And why don't you
20 let me get a look at that, Mr. Dorrance. I'll probably be
21 willing to stipulate to that. But I just wanted -- so we
22 didn't have to go through the deposition.

23 MR. DORRANCE: Yes. And, of course, sometimes
24 they amend plan documents. And I would take it that my
25

1 request for information would not only cover the time
2 period governing Ms. Tesche's claim, but also up to and
3 including the present.

4 MR. BURNS: Yes. And AMP Inc. would be the
5 person you might want to contact.

6 MR. DORRANCE: Okay. I don't expect you to do my
7 investigation for me, only provide information that it's
8 within your control to obtain.

9 MR. BURNS: Right.

10 BY MR. DORRANCE:

11 Q Ms. Sauerhoff, does CNA regard the claimant as
12 having the burden of proof on the question of disability?

13 MR. BURNS: I'm going to object to that question
14 to the extent it calls for a legal conclusion. But if you
15 understand that, Ms. Sauerhoff, you can respond to it.

16 A It's my understanding when a claimant files a
17 claim for disability that they are obligated to produce
18 information relating to their disability, any medical
19 information, or any information that supports their claim.

20 BY MR. DORRANCE:

21 Q And do you know whether or not CNA, as a claims
22 administrator, has any obligation to assist the claimant
23 with the application and the review process?

24 MR. BURNS: I'm going to object to the form of
25

1 the question as leading. And I think it's also in some
2 respects a legal conclusion. But to the extent that you
3 have that knowledge or information, you can testify to it,
4 Ms. Sauerhoff.

5 A CNA's obligation when a claim is filed is to
6 review the information presented and to gather any further
7 information to help them assist in their disability
8 determination.

9 BY MR. DORRANCE:

10 Q Do you consider yourselves as neutral third
11 parties in reviewing the disability application?

12 MR. BURNS: Same objection as previously raised
13 without restating them. But you can respond, if you
14 understand that, Ms. Sauerhoff.

15 A Again, my understanding is that we are obligated
16 to review the information, gather any information and
17 relate it to the policy to determine if that person is
18 eligible and disabled in accordance to the policy.

19 BY MR. DORRANCE:

20 Q Let me put it this way: Do you consider your
21 position similar to adversaries in litigation with a
22 claimant, or do you consider yourself independent
23 decisionmakers?

24 MR. BURNS: Same objections as previously raised,
25

1 in particular the legal conclusion aspect of it. But to
2 the extent that you have that knowledge or information,
3 Ms. Sauerhoff, you can respond to that question.

4 A Again, maybe I'm not completely understanding. I
5 don't see ourself as adversaries. We just gather
6 information and review it, based on the policy.

7 BY MR. DORRANCE:

8 Q The disability specialist and the nurse case
9 manager are employees of CNA, correct?

10 A Correct.

11 Q And the vocational case manager is an employee of
12 CNA?

13 A Yes.

14 Q The panel of doctors that are available for
15 consultation are not employees, to the best of your
16 knowledge?

17 A Correct.

18 Q Are the members of the appeals committee
19 employees of CNA?

20 A Yes.

21 Q How are the members of the committee appointed?

22 A Well, by their expertise. First off, if there is
23 an opening available, anyone is eligible to apply. But
24 normally they look at your claims-handling expertise, and
25

1 expertise in ability to make independent decisions.

2 Q And how do they determine your ability to make
3 independent decisions?

4 A They base that on your experience, work ability,
5 how you've handled case loads, claims, totality of
6 information.

7 Q Does the appeals committee consist of any medical
8 doctors?

9 A No.

10 Q Does the appeals committee consist of any
11 professional in the healthcare profession?

12 A There are two registered nurses that are members
13 of the appeals committee.

14 Q What are the profesional profiles of the other
15 members of the committee at present?

16 MR. BURNS: Mr. Dorrance, if I could cut to the
17 chase here to prevent a lot of questioning on the appeals
18 committee. The appeals committee is single individuals,
19 and it's made up of several members. And to the extent
20 that -- one member is usually assigned a case and then to
21 the extent that that one member believes that they need
22 other individuals to assist in evaluating the claim, they
23 are free to go to those other appeals committee members.

24 In this case, it's my understanding that the
25

1 appeals committee was, in fact, an appeals committee of
2 one; and that's Ms. Sauerhoff. So that if you want to get
3 into the makeup of the other members, it may not be
4 relevant herein. And it may be things you don't need to
5 go through.

6 MR. DORRANCE: Thank you for clarifying that. I
7 still need to get an answer on the professional
8 qualifications of the members of the committee generally.

9 MR. BURNS: Okay.

10 BY MR. DORRANCE:

11 Q So if you could, please, answer that question.

12 A Sure. The other members are senior claims
13 consultants with varied backgrounds or experiences in
14 claims handling, years of experience. I believe most of
15 the members do have bachelor's degrees. I'm not quite
16 sure what -- I can only speak to what my degree is in.

17 Q And who makes the decision to appoint a member of
18 the committee?

19 A That would be my manager and director.

20 Q And what's his or her name?

21 A Her name is Cindy Mansuy. I believe that's
22 M-A-N-S-U-Y.

23 Q M-A-N-S-U-Y?

24 A Correct.
25

1 Q And was she the manager at the time Joan Tesche's
2 claim was decided by the committee?

3 A Yes.

4 Q So she's been the one that appoints the committee
5 currently and, indeed, appointed the committee when Joan
6 Tesche's application was being reviewed?

7 A Correct.

8 Q And what is her professional profile?

9 A I don't know. I know she's an officer or
10 director of the company, but that's all the knowledge I
11 have.

12 Q Do you know whether or not she's on the board of
13 directors?

14 A I don't know.

15 MR. DORRANCE: Mike, is that something you can
16 get for me?

17 MR. BURNS: Why don't you put it in the form of
18 an interrogatory and I'll get it for you. How's that?
19 Just so we protect ourselves.

20 MR. DORRANCE: Sure. Thank you.

21 BY MR. DORRANCE:

22 Q Are appeals to the committee customarily decided
23 by one person?

24 A Usually, yes. Like Mr. Burns explained, if the
25

1 committee member reviewing that file feels the need to
2 call the committee together or go for other expertise,
3 then that would be the individual decision of that appeal
4 committee member.

5 Q Is the individual on the appeals committee who
6 decides the case in this example, customarily the
7 individual who has followed the case from its inception?

8 A I'm sorry can you repeat that question?

9 Q You testified that, tell me if I'm wrong, appeals
10 to the appeals committee are customarily decided by one
11 individual?

12 A Correct.

13 Q And that individual has some discretion as to
14 whether he or she consults with one or more members of the
15 appeals committee?

16 A Correct.

17 Q And in those cases where the decision is made by
18 one member of the committee, is that individual someone
19 who is customarily familiar with the claim itself?

20 A Yes, had reviewed it independently and then is
21 rendering the decision.

22 Q Let me ask it this way: Is the disability
23 specialist ever a member of the appeal committee?

24 A No.

25

1 Q Is the disability specialist ever consulted by a
2 member of the appeals committee?

3 A They could be. If they need some clarification
4 or information in the file, you can go back to that person
5 to question them.

6 Q When an applicant receives supplemental security
7 income, otherwise known as SSI, or Social Security
8 disability, does the company consider that important in
9 evaluating the disability claim submitted to CNA?

10 MR. BURNS: Let me object to the form of the
11 question as a leading question. And also I think in the
12 context of the terminology used, important. But with that
13 caveat, you can answer the question, Ms. Sauerhoff.

14 A Well the information is taken into consideration,
15 but CNA's decision is independent and based upon the
16 policy and the evidence presented to that particular
17 claim.

18 BY MR. DORRANCE:

19 Q If you know, is the criteria for determining SSI,
20 or Social Security disability, the same, similar or
21 dissimilar to the criteria used by CNA in determining
22 disability?

23 MR. BURNS: I'm going to object to the form of
24 the question in that it's compound, and also because
25

1 you're assuming something that may not be of record. But
2 if you have personal knowledge, you can answer the
3 question.

4 MR. DORRANCE: I'll break it down into three.
5 You are right, this is a compound question. I'll rephrase
6 it.

7 MR. BURNS: Just ask her what her understanding
8 is in terms of Social Security disabilities benefits, the
9 requirements for Social Security benefits.

10 MR. DORRANCE: I'll ask her in a series of
11 questions.

12 BY MR. DORRANCE:

13 Q If you know, is the criteria for an award of SSI
14 or Social Security disability benefits the same as the
15 criteria used by CNA in deciding disability benefits under
16 a long-term disability policy?

17 A Well, I used to work for the Social Security
18 administration some years back. And they do have a
19 sequential evaluation -- or at least they did when I was
20 there -- so the requirements are different. At CNA we
21 adhere to the policy and the provisions in the policy that
22 are applicable.

23 Q Based on your knowledge of working with the
24 Social Security administration, are the requirements for
25

1 Social Security disability more difficult to satisfy than
2 the requirements under a CNA long-term disability policy?

3 MR. BURNS: I'm going to object to that question.
4 To the extent you are getting into an assessment that
5 would be predicated upon a lack of personal knowledge, or
6 you are trying to secure a definition that may not be
7 appropriate in the context of the policy and/or for
8 information that may not be relevant, I'll object to the
9 question. But I'll let you answer the question, Ms.
10 Sauerhoff, if you understand it.

11 A My understanding at the time when I was with
12 Social Security administration some years back that it was
13 difficult to be approved at the initial and
14 reconsideration phase, but the administrative law judge
15 level was much lenient.

16 BY MR. DORRANCE:

17 Q Let me put it this way, Social Security, based on
18 your experience, looks at several factors, including
19 whether the claimant can perform past relevant work; is
20 that correct?

21 A Correct.

22 Q And based on your experience, and if you know,
23 the Social Security also looked to determine whether the
24 claimant can perform any substantial gainful employment,
25

1 taking into account the claimant's physical restrictions,
2 if any, vocational profile, and educational background?

3 A Correct.

4 Q And are those factors that CNA considers in
5 deciding a disability claim?

6 A Again, our policy, the provisions go, first, the
7 own occupation. And I think that's where the difference
8 is. Social Security looks immediately at any occupation.
9 So the any occupation provisions for CNA don't apply until
10 after the own occupation has been exhausted.

11 Q Do you ever have an occasion where the Social
12 Security claim is pending and the appeals committee is
13 also reviewing a claim for disability under the policy?

14 MR. BURNS: Let me object to that and ask what
15 the relevance of that is in the context of this case. Not
16 only is it constituting something that is not relevant,
17 but it's very broad and vague. And I'm going to ask you
18 for an offer of proof in some respects to tell me why that
19 would be relevant or significant to the case at issue.

20 MR. DORRANCE: Well, I'll withdraw the question
21 and ask it more specifically later.

22 BY MR. DORRANCE:

23 Q I believe you've already identified the
24 information that is reviewed at the first level of CNA's
25

1 review process, that included the attending physician's
2 statement, the employer's statement and the employee's
3 statement, as well as relevant policy provisions; is that
4 correct?

5 A Correct.

6 Q Are those the same documents considered by the
7 appeals committee?

8 A Yes. At the appeals committee level, we look at
9 the entire file. But those documents would be included.

10 Q Does the disability specialist, based on your
11 experience, place greater weight on the statement of the
12 attending physician than she does on a physician who has
13 been consulted by the attending physician?

14 MR. BURNS: I'm going to object to the form of
15 the question. To the extent you know, Ms. Sauerhoff, if
16 you have personal knowledge of that, you can answer the
17 question.

18 A My understanding is that the nurse case manager
19 and the disability specialist look at all the information
20 presented and make their determination based on the
21 totality of that information.

22 BY MR. DORRANCE:

23 Q What I'm getting at, I know, for example, on the
24 Social Security Administration, little weight is given to
25

1 reports of a chiropractor, and far greater weight and
2 importance is placed on the treating physician's opinion.

3 To the best of your knowledge, does CNA make any
4 distinctions between a healthcare provider, depending on
5 the type of license he holds and whether he is a family
6 doctor or specialist, things of that nature?

7 A Again, we look at all the information presented.
8 But normally we would go with the treating doctor or the
9 primary care doctor who is orchestrating the treatment
10 plan. And then also relying on auxiliary services, such
11 as specialists or consultants or things of that nature.
12 But my knowledge is that everything is based on the
13 totality of the information presented together.

14 Q So one specialty is not given any greater weight
15 than another or does it depend on the facts of the
16 particular case?

17 MR. BURNS: I'll object to the form of the
18 question. But if you understand it, you can answer it,
19 Ms. Sauerhoff.

20 A I would have to say relates to the claim for
21 disability and the facts of the case. Certainly, if it's
22 a cardiac claim, you are not going to be asking a
23 podiatrist information related to that.

24 BY MR. DORRANCE:
25

1 Q Now I'd like to turn our attention to your
2 knowledge of Joan Tesche's case. If you could, summarize
3 your involvement and knowledge concerning the file.

4 A Okay. I would have reviewed the claim as of the
5 date of my letter. Actually, the claim had been received
6 in the appeals committee area on January 3, 2000. And I
7 would have logged it into our appeals tracking system or
8 docket, so to speak, for review.

9 And then I would personally have reviewed the
10 file on February 21, 2000, the date of my letter. And I
11 would have reviewed the entire claim. Usually, I start
12 from the back to the very beginning reviewing all the
13 information contained in the claim file, looking at the
14 policy to see if that decision was deemed as correct and
15 proper. Then my letter would speak to the knowledge that
16 I pulled from or the results of that review.

17 Q Did you maintain any separate notes of what you
18 did on this file?

19 A No.

20 Q It is customary for CNA employees to maintain
21 notes of their involvement on the file?

22 A Well, if there was any actions on the file, such
23 as a file activity sheet document or the nurse case
24 manager database document, those actions would be
25

1 recorded. As far as with the appeals committee, our
2 documentation is the letter that describes our review,
3 what was reviewed and what the conclusions of that review
4 were.

5 (Recess.)

6 BY MR. DORRANCE:

7 Q Ms. Sauerhoff, there were a number of documents
8 attached to the complaint that we filed in this case. I
9 don't know if you have ready access to any of them. Maybe
10 I'll be a little more specific. The first document I'd
11 like to talk about is your letter to Ms. Tesche's former
12 lawyer, Steven Courtney, and that's dated February 21,
13 2000. It appears to be a two-page letter. It was
14 identified in the amended complaint as Exhibit F. Do you
15 have that two-page document?

16 A Yes.

17 MR. DORRANCE: I'll ask that this be made
18 Sauerhoff Exhibit Number 1. And we can just make a copy
19 here, if that's okay, Mike.

20 (Letter marked as Sauerhoff Exhibit Number 1.)

21 MR. BURNS: Why don't you just make a copy and
22 just keep track of how you are marking them.

23 MR. DORRANCE: Okay.

24 MR. BURNS: And, if you would, just for purposes
25

1 of the record later on, if you have the base numbered
2 copy, it might be appropriate also just to note what the
3 Bates number is.

4 MR. DORRANCE: Okay. That's a good idea. I'll
5 give you a moment to get a copy of that document in your
6 hand.

7 BY MR. DORRANCE:

8 Q Pardon?

9 A I do have the letter.

10 Q You do have the letter?

11 A Yes, I do.

12 Q Have you had a chance to review that?

13 A Yes, I have.

14 Q Does this letter contain all the reasons why Ms.
15 Tesche's disability claim was denied by the appeals
16 committee?

17 A It's the conclusion of the review of all the
18 information. But, yes, it is our finding that Ms. Tesche
19 was capable of performing other occupations, as
20 identified, and therefore is no longer disabled in
21 accordance with the policy.

22 Q Now, I note in some of the other correspondence
23 that preceded this decision -- and which correspondence
24 attached to the amended complaint, I might add -- there is
25

1 an individual by the name of Laura Collins. are you
2 familiar with that individual?

3 A Yes.

4 Q And was she the disability specialist assigned to
5 this file?

6 A Yes.

7 Q Was a nurse case manager assigned to this file?

8 A Yes.

9 Q And what was her name?

10 A I believe there might have been changes. I
11 think, originally, it started out with Mary Ann Gregg,
12 G-R-E-G-G.

13 Q I'll give you a chance to look over your
14 information, if you need to.

15 A Sure. Because there were some changes. It's
16 reflected on the nurse case manager database.

17 MR. BURNS: Pam Groover.

18 A By Pam Groover, was another, G-R-O-O-V-E-R.

19 BY MR. DORRANCE:

20 Q Was Pam the original case manager?

21 A I don't believe she was the original nurse case
22 manager. I believe that person was Mary Ann Gregg.

23 Q And then Pam became the nurse case manager?

24 A Yes.

25

1 Q And what qualifications, I should say, what
2 requirements or qualifications do the vocational case
3 managers have, if you know?

4 A I don't know.

5 Q Did you consult with the vocational case manager
6 in reviewing this case in your capacity as the sole member
7 of the appeals committee making this decision?

8 A I didn't personally consult with him. I looked
9 as his review that he had conducted.

10 Q Did you consult with Laura Collins in making your
11 decision as a member of the appeals committee?

12 A No, I did not.

13 Q Did you consult with either of the nurse case
14 managers in making your decision?

15 A No, I did not.

16 Q Did you consult with anyone orally in making your
17 decision?

18 A No, I did not.

19 Q I take it you didn't interview the claimant, Joan
20 Tesché?

21 A No, I did not.

22 Q I take it you didn't speak with the treating
23 physician, Dr. Wolf?

24 A No.
25

1 Q I take it you didn't speak with the family
2 doctor, an internist by the name of Dr. Rubenstein?

3 A No.

4 Q Your letter which we marked Sauerhoff Exhibit 1
5 -- bear with me here, I lost my place --

6 A Okay.

7 Q -- sets forth certain definitions in the policy;
8 is that correct?

9 A Correct.

10 Q And the first would be the 24 month own occ. or
11 employee occupation definition; is that correct?

12 A Correct.

13 Q And the second one provides the definition of
14 total disability for purposes of determining Ms. Tesche's
15 eligibility for long term disability; is that correct?

16 A Correct. The second part is for disability from
17 any occupation.

18 Q Any occupation, and that's the abbreviated
19 description any occ. Is that right?

20 A Correct.

21 Q And essentially there are two criteria that are
22 included under this definition. Is that fair to say?

23 A Correct.

24 Q And the first criteria is, quote, continuously
25

1 unable to engage in any occupation for which she -- well,
2 it says he -- is or becomes qualified by education,
3 training or experience. Is that the first criterion?

4 A Yes.

5 Q And then the second criterion is, quote, under
6 the regular care of a licenses physician other than
7 himself, period, end of quote. Is that correct?

8 A Correct.

9 Q Are those the only two criteria that are used by
10 CNA and by the appeals committee in deciding a long-term
11 disability claim?

12 A Correct.

13 Q Correct me if I'm wrong, other than the question
14 of whether Ms. Tesche satisfied the definition of total
15 disability, she was an eligible claimant, was she not?

16 A Yes. There was no question of her eligibility.

17 Q And as part of that, she was clearly a full-time
18 employee who had paid premiums under the policy?

19 A Correct.

20 Q And, indeed, this was a noncontributory policy,
21 is that not also correct?

22 A One second. Let me look at the policy. I'm
23 sorry, did you say what type?

24 Q Noncontributory policy.
25

1 A I'm looking at the face page to the policy.
2 Application says what percent of premium is to be paid by
3 the employer. It says zero percent. I'm just looking to
4 see if there is a rider to that, because that would lead
5 me to believe that she would pay premiums for the policy.
6 And that would make it contributory.

7 MR. BURNS: I don't see anything, any riders.
8 But you might want to take a look yourself, Ms. Sauerhoff.
9 I don't see any riders that indicate that there was any
10 premium contribution by the employee.

11 MR. DORRANCE: By the employee?

12 MR. BURNS: I mean by the employer. I'm sorry.

13 A Yes. I don't see anything that speaks contrary
14 to the statement seven on the application.

15 BY MR. DORRANCE:

16 Q So based on your review, Ms. Tesche paid for all
17 the premiums under this policy?

18 A Well, that's my understanding, yes.

19 Q And the information would seem to support -- the
20 documents in front of you would seem to support that?

21 A Correct.

22 Q Do you know whether or not the disability
23 specialist -- I'm looking for her name again -- Laura
24 Collins?

25

1 A Correct.

2 Q Consulted with the vocational case manager?

3 A Yes. I'm looking for that. The file would have
4 been referred to the vocational case manager. Actually,
5 on the file activity sheet, and it's dated June 2, 1999,
6 there's an entry. It says, received permanent
7 restrictions from AP, which would be attending physician,
8 conferenced with the nurse case manager, will send file
9 for vocational assessment. And that was cosigned by Laura
10 Collins. And I believe the nurse at that point was Holly
11 Henry, H-E-N-R-Y.

12 Q To your knowledge, was that the first vocational
13 assessment that was requested?

14 A Yes.

15 Q And do you have anywhere in your documentation
16 the results of that assessment?

17 A Yes. Mr. Gullidge had performed an any
18 occupation assessment dated June 9, 1999. There's an
19 entry of that review on the case management database. And
20 also a handwritten statement on the file activity sheet
21 dated June 9, 1999, that vocational review, own
22 occupation, only claim. And it's hard to read the rest of
23 writing, but it looks like the disability specialist will
24 pay through the own occupation period and close. Then
25

1 it's got Mr. Gullidge's initials.

2 Q Does it say anything else?

3 A On July 26, 1999, Ms. Collins writes an own
4 occupation letter sent.

5 Q Are you referring now to handwritten notes?

6 A The file activity sheet.

7 Q Okay. I'd like to make that file activity sheet
8 Sauerhoff Exhibit 2. It looks like a two-page file
9 activity sheet; is that correct?

10 (File activity sheet marked as Sauerhoff Exhibit
11 Number 2.)

12 A The file activity sheet --

13 BY MR. DORRANCE:

14 Q I'm sorry to interrupt you. For Mr. Burns'
15 benefit, if he hasn't already identified the Bates
16 numbering on that, it's -- well, I'm not going to read all
17 the letters, but the end, 130131. The full identification
18 is CCC, followed by three zeros, 130. And I'll just wait
19 for Mr. Burns to get that.

20 MR. BURNS: I'm okay. I just wanted to get it on
21 the record.

22 BY MR. DORRANCE:

23 Q And I just want to make sure I am looking at the
24 right document. The first entry in terms of a date is
25

1 2/16/99; is that correct?

2 A Correct. That's what I'm looking at.

3 Q Actually, they are sort of out of -- the Bates
4 numbering is out of sequence because page 131 is actually
5 earlier in terms of chronology. And page number 130, is
6 that right -- in other words, maybe the next page of what
7 you have, the first date on the left side is 10/14/97, is
8 that right?

9 A It looks like -- wait, I'm sorry. Yes, you are
10 correct.

11 Q And you were reading from the entry of 6/2/99.
12 Is that right?

13 A Right. And also 6/9/99 and 7/26/99.

14 Q And there's a reference to -- actually, I'm
15 sorry. Could you read the 6/9/99 again, please?

16 A Right. It says, let's see, June 9, 1999, voc.
17 review, own occupation, only claim. Then it has DBS,
18 which is disability specialist, paid through own
19 occupation period, and close. Then it has the initials,
20 well, I know its Tony Gullidge. It might be TLG.

21 Q You are familiar with Tony's handwriting?

22 A Yes.

23 Q What's the reference to close mean, if you know?

24 A It just means that the file is -- the claimant is
25

1 only disabled from their own occupation, and not disabled
2 from any occupation, so to pay out under those provisions.
3 And close usually means to go ahead and give them their
4 appeal rights.

5 Q And, indeed, the next entry on this two-page
6 exhibit -- actually I'm not sure I even asked you to
7 identify it. Is this the final activity sheet that you
8 were referring to?

9 A Yes, it is.

10 Q And the next entry on the file activity sheet,
11 with a Bates numbering of 130, is 7/26/99. Is that right?

12 A I'm sorry. What is that again?

13 Q The next date as you are going down the page on
14 the left side, right after the entry you just referred to,
15 is dated July 26, 1999?

16 A Correct.

17 Q And that states, quote, own occ. letter sent, L.
18 Collins. Is that right?

19 A Correct.

20 Q And is this the letter that you send when you are
21 confirming the termination of own occ. coverage?

22 A Correct. It would identify the occupation
23 described or that had been identified by the vocational
24 consultant and that no further benefits are payable, and
25

1 would offer appeal rights.

2 Q Is there any other information recorded in your
3 file as to the findings of the vocational case manager?

4 A Well, just what I had identified previously on
5 the nurse case manager database would be a typed
6 assessment conducted by Mr. Gullidge on July 9, 1999,
7 about his own occupation, or any occupation assessment.

8 Q 7/9/99?

9 A No. It's June 9, 1999. It's page one of one
10 page.

11 Q I'm with you. I see a second page. Okay. I've
12 got the pages you are referring to here. Just for the
13 record, that's Bates no. 141. And it appears to be 142.
14 It looks like it spilled over onto the next page, unless
15 I'm misunderstanding it. Or maybe that's -- I'm sorry.
16 That's Holly Henry's reference, I believe.

17 MR. BURNS: They are different pages.

18 MR. DORRANCE: Yes. So it's only a one-page
19 document.

20 MR. BURNS: Right. That's 141, so the record's
21 clear.

22 BY MR. DORRANCE:

23 Q Right. Back to your Exhibit Number 2. The very
24 next entry as we are going down the page is August 24,
25

1 1999; is that correct?

2 A That's correct.

3 Q Correct me if I am wrong, it says as follows,
4 quote, review for settlement, not appropriate since the
5 own occ. period is not more than six months, period, end
6 of quote. And I can't read the initials. Is that an
7 accurate quoting of that entry?

8 A Actually, it reads, I think part of it -- I'll
9 read it exactly how I can read it here.

10 Q Okay.

11 A It says reviewed for settlement, not appropriate
12 since the remaining own occupation period is not more than
13 six months.

14 MR. BURNS: Would you identify the signature, Ms.
15 Sauerhoff, too?

16 A It's P. Ward, W-A-R-D.

17 BY MR. DORRANCE:

18 Q Do you know who P. Ward is?

19 A Pamela Ward.

20 Q And who is Pamela Ward? What is her job title?

21 A Disability specialist.

22 Q So Laura Collins was the initial disability
23 specialist on the file?

24 A Correct.

25

1 Q Is there any indication why Paula Ward -- is it
2 Paula Ward?

3 A Pamela.

4 Q Pamela Ward became --

5 MR. BURNS: Ward.

6 BY MR. DORRANCE:

7 Q Pamela Ward, is that the right name?

8 A Correct. Pamela Ward.

9 Q Is there any indication as to why she took over
10 this file from Laura Collins?

11 MR. BURNS: Objection to the form of the
12 question, assuming facts not of record.

13 BY MR. DORRANCE:

14 Q Do you know whether Pamela Ward took over the
15 file from Laura Collins?

16 A I don't believe she took over the file, but I
17 think payouts were being proposed. It's an alternative
18 resolution payment. In other words, you have so many
19 months remaining of the file, would you prefer to have
20 this in a lump sum or paid monthly.

21 And I think in this situation, because there was
22 less than six months remaining, when they indicate review
23 for settlement, they are looking at actually a payout of
24 the remaining of the own occupation period. But it was
25

1 determined that would not be appropriate since there's
2 less than six months left, they would just pay out each
3 month, accordingly.

4 Q would that decision be something that Laura
5 Collins would customarily make, or is that something that
6 is uniquely part of Pamela Ward's responsibilities?

7 MR. BURNS: Object to the form of the question,
8 that's compound, and also the characterization in terms of
9 definitions of uniquely.

10 MR. DORRANCE: I'll rephrase it.

11 MR. BURNS: It's very unclear.

12 MR. DORRANCE: I agree.

13 BY MR. DORRANCE:

14 Q Is that something that would be part of Laura
15 Collins' responsibilities?

16 A No. I don't believe it would have been.

17 Q Based on your knowledge, is that something that
18 would be normally part of Pamela Ward's responsibilities?

19 A Yes. I believe that was Pamela's responsibility,
20 to identify any potential payout claims.

21 Q Have you been able to identify any entries or
22 documents created by the nurse case manager?

23 A You mean other than the nurse case manager
24 database?

25

1 Q Right.

2 A Well, there were some entries that were cosigned
3 by the nurse case manager and the disability specialist.

4 Q Could you just identify those for the record,
5 please.

6 A Yes. It was on June 2, 1999, of the file
7 activity sheet where it indicated that Laura Collins and
8 Holly Henry conjunctly reviewed the information and
9 forwarded the file on for a vocational assessment for any
10 occupation. And I believe Ms. Henry had a typed nurse
11 case manager note corresponding to that that was behind
12 Mr. Gullidge's any occupation assessment. Ms. Henry's
13 note was dated June 2, 1999.

14 Q And that states, among other things, quote, will
15 send file to VOC, and close the case management, period,
16 end of quote?

17 A Correct.

18 Q And actually, the preceding statement in that
19 document which has a Bates number of 142 states, quote,
20 based upon information from capital A, capital P, comma,
21 claimant appears to be, capital T, capital D, own occ.,
22 period, end of quote. Is that an accurate quote?

23 A Yes, it is.

24 Q And I think you previously said the AP reference
25

1 refers to attending physician; is that right?

2 A Correct.

3 Q Do you know which physician is being referred to
4 there by the abbreviation AP?

5 A Well, I'd have to look at the preceding notes
6 leading up to that. And it looks like Ms. Henry was
7 contacting Dr. Wolf and recording restrictions and
8 information that he had presented.

9 Q And it appears also that Dr. Rubenstein, the
10 family doctor, was being consulted; is that correct?

11 MR. BURNS: Make sure.

12 A I'm looking now. Now I know prior to -- I'm
13 looking at a claim activity sheet that begins with the
14 date of May 11, 1999, at the top. On the very bottom it
15 has page two of nine. And there are information drawing
16 from Dr. Rubenstein, as well. But that information was
17 dated March 10 of 1999. And they were waiting for Dr.
18 Wolf's response as well.

19 Q I see a document which has a Bates numbering of
20 185. In fact, I'm going to make this as an exhibit.
21 We'll call it Sauerhoff Exhibit 3. It's really easier to
22 read sideways. In fact, it's set up in a format that you,
23 I should say read from bottom to top. And it looks like
24 it's completed by Dr. Rubenstein, attention Stacey. And
25

1 one of the headings is, quote, please see the included job
2 activity sheet, period, end of quote. Tell me if you are
3 able to identify that one.

4 (Document marked as Sauerhoff Exhibit Number 3.)

5 MR. BURNS: Can I direct her to where it is?

6 MR. DORRANCE: Sure.

7 MR. BURNS: Cheryl?

8 A Yes.

9 MR. BURNS: It's right after The Orthopedic
10 Institute of Pennsylvania, there's a fax to Holly Henry.
11 Then after that, there's a May 11, 1999 letter to Dr. Wolf
12 where he completed a physical capacity for the nurse case
13 manager, and then after that, there's a sideways paper
14 which is a CNA form. And it says Dr. Rubenstein,
15 attention Stacey, regarding Joan Tesche.

16 A I have that.

17 BY MR. DORRANCE:

18 Q Are you familiar with this document?

19 A Yes.

20 Q This is a one-page form completed by Dr.
21 Rubenstein?

22 A Correct.

23 Q Does it say at the bottom, quote, the above are
24 the patient's self-described limitations, period. If
25

1 confirmation is required, suggest independent medical
2 examination by physiatrist or orthopedic surgeon, period,
3 end of quote.

4 A Yes.

5 Q Do you know whether or not there was an
6 independent medical examination of Joan Tesche by any
7 healthcare provider?

8 A No, there was not.

9 Q I call your attention to a one-page document
10 which actually was the one Mr. Burns was referring to,
11 with a Bates no. 184. It's a letter from Holly Henry to
12 Dr. Wolf dated May 11, 1999. Do you have that document?

13 A Yes, I do.

14 Q Could you please describe what you call this
15 document?

16 A well, I don't know of a name for it. It's a
17 questionnaire that the nurse, in this case Holly Henry,
18 had sent to the doctor regarding restrictions or
19 limitations to assess functionality.

20 Q And does it indicate any question concerning
21 whether Ms. Tesche would be disabled from any occupation?

22 A No. It asked for, you know -- there was a series
23 of four questions. And it just asks what the current
24 restrictions and limitations are, what findings did he
25

1 have to support that, is she medically stable at this
2 time, and what's her prognosis for return to her
3 occupation. I don't see any indication of any occupation.

4 Q Do you know whether or not there was any
5 questionnaire directed to either Dr. Rubenstein or Dr.
6 Wolf, inquiring whether Ms. Tesche was disabled from any
7 occupation?

8 A No. The information requested from CNA asked for
9 restrictions, limitations, medical stability.
10 Determinations of any occupation are a vocational matter.
11 So we wouldn't have asked the doctor are they capable of
12 performing any occupation.

13 Q So there was no questionnaire specifically asking
14 the doctor, any doctor, whether it be Dr. Rubenstein, Dr.
15 Wolf, or any other physician, whether Ms. Tesche was
16 totally disabled from any occupation?

17 MR. BURNS: Objection, leading question. But you
18 can answer, Ms. Sauerhoff.

19 A Correct. There was no question to any of the
20 doctors asking if Ms. Tesche was disabled from any
21 occupation.

22 BY MR. DORRANCE:

23 Q So once the case changed from an own occ. status
24 to a determination of whether Ms. Tesche qualified under
25

1 the any occ. definition, it's your understanding that CNA
2 was only looking at the disability issue from a vocational
3 standpoint.

4 MR. BURNS: Objection. Mischaracterizes the
5 record and her testimony. But if you understand the
6 question, you can answer it.

7 MR. DORRANCE: I'll rephrase the question.

8 BY MR. DORRANCE:

9 Q Is it your understanding that after the case
10 transitioned to the issue of whether Ms. Tesche was
11 disabled from any employment, CNA was only looking at this
12 case from a vocational standpoint?

13 MR. BURNS: Same objections. But you can answer
14 it if you understand it, Ms. Sauerhoff.

15 A Well, at that point, once it got beyond the own
16 occupation, we were looking at the medical restrictions,
17 abilities, limitations, medical stability, to determine
18 was she disabled from any occupation. And that would be a
19 vocational determination.

20 BY MR. DORRANCE:

21 Q But during the appeal process, did CNA ask Ms.
22 Tesche to provide any additional information supporting
23 her disability claim?

24 A Well, in the original denial or termination
25

1 letter, Ms. Collins did offer appeal rights to Ms. Tesche
2 that would say, if you have any additional information
3 that you wish to submit that would alter our decision,
4 then she had that opportunity at that point to produce
5 that.

6 Q So, were you considering additional medical
7 evidence, or were you limiting your review to vocational
8 information?

9 MR. BURNS: Objection. Mischaracterization and
10 misrepresentation. But you can answer it if you
11 understand it, Ms. Sauerhoff.

12 A It would be any information that Ms. Tesche felt
13 would alter the decision. And that could include medical,
14 it could include a variety of information.

15 BY MR. DORRANCE:

16 Q I turn your attention back to your letter denying
17 her appeal. It was dated -- bear with me here.

18 MR. BURNS: February 21, 2000.

19 MR. DORRANCE: February 21, 2000. Thank you.

20 A Okay.

21 BY MR. DORRANCE:

22 Q I specifically call your attention to the second
23 page, third paragraph, last two sentences, the sentence
24 that begins, quote, the letter dated 12/22/99 from Dr.
25

1 Wolf. Do you see that?

2 A Yes, I do.

3 Q Please take a minute to review those two
4 sentences.

5 A Okay.

6 Q Now, the first sentence states that, essentially,
7 Dr. Wolf's letter did not provide his opinion as to why
8 the listed occupations -- let me rephrase that, I'm sorry.
9 Basically, it says that Dr. Wolf's letter of December 22,
10 1999, does not state why he feels the claimant is unable
11 to perform the listed occupations; is that right?

12 A Correct.

13 Q At any time during the appeal process, did CNA
14 send a questionnaire to Dr. Wolf asking for more detail?

15 A No.

16 Q At any time during the appeal process, did CNA
17 advise Ms. Tesche that she should obtain additional
18 information from Dr. Wolf explaining his findings
19 concerning her inability to perform any employment?

20 MR. BURNS: I'm just going to object to the form
21 of the question. But you can answer it, if you understand
22 it.

23 A I'd say no.

24 BY MR. DORRANCE:

25

1 Q I call your attention to the next paragraph,
2 after the one we just referred to. Could you please read
3 that for us?

4 A "while we appreciate Dr. Wolf's opinion, the any
5 occupation determination is a vocational determination
6 based on the claimant's permanent medical restrictions,
7 geographic location, economic parity, age, experience, and
8 education."

9 Q Is that a correct description of the standard
10 that you use in reviewing a long-term disability claim?

11 A Yes.

12 Q Turn your attention to the final paragraph. You
13 state that: In your opinion, the decision to terminate
14 benefits was correct, quote, correct and proper, end
15 quote. Is that correct?

16 A Correct.

17 Q And then it states, quote, you have exhausted
18 your administrative remedies at this time and this
19 decision is final and binding, period, end of quote. Is
20 that correct?

21 A Correct.

22 Q Do you have any document which states that the
23 appeals committee's decision is final and binding?

24 A well, we don't have any documents. But we
25

1 operate under a list of regulations which do entitle the
2 claimant to a fair and independent review. And it doesn't
3 speak to multiple appeals or reviews.

4 Q So you are not aware of any document that states
5 your appeals committee's decision is final and binding?

6 MR. BURNS: I'll object to that statement. I
7 think she just responded to that. But you can answer the
8 question, if you understand it.

9 A Well, again, there is no document that I am aware
10 of.

11 BY MR. DORRANCE:

12 Q And, if you know, ERISA does authorize a claimant
13 to file suit in court to seek unpaid benefits, doesn't it?

14 A Yes, it does.

15 Q So, really, the decision of the appeals committee
16 is not final and binding; is that correct?

17 MR. BURNS: I'm going to object to the
18 characterization and to the form of the question. But if
19 you understand it, Ms. Sauerhoff, you can answer it.

20 A It's my understanding that the appeals committee
21 reviews, independently, all the facts of the case, the
22 information presented, and makes a determination.

23 And if the determination is that the claim is not
24 payable, then that is final and binding, in our policy.

25

1 And when we say you've exhausted all administrative
2 remedies, that means the appeals process is complete.

3 BY MR. DORRANCE:

4 Q Now, there seemed to be some question on the part
5 of Steven Courtney, the lawyer previously representing Ms.
6 Tesche, as to whether your final decision had been made in
7 this case. Do you recall that exchange of correspondence?

8 A No. Do you have a letter or date you can refer
9 me to?

10 Q Yes. First of all, does anyone need to take a
11 break?

12 A I'm fine.

13 Q I'm looking at everybody here in attendance. I'm
14 looking at, well, among other things, a document, a one
15 page document with a Bates number 115, a letter from Jon,
16 J-O-N, Holland, H-O-L-L-A-N-D, directed to Steven
17 Courtney, Attorney at Law. I think I said it was dated
18 April 12, 2000.

19 A Okay. I see that.

20 Q Obviously Mr. Courtney -- apparently, I shouldn't
21 say obviously -- it appears that Mr. Courtney either did
22 not receive or -- well, it appears that he did not receive
23 your final decision that we've marked as Sauerhoff Exhibit
24 1. Does your review of this letter refresh your
25

1 recollection?

2 A I'm looking at a letter now that was from
3 Mr. Courtney, dated April 7, 2000, directed to Laura
4 Collins.

5 Q Okay.

6 A And he does state that: "Please be advised that
7 as of this date of this letter I have not received any
8 response to my letter dated April 4, 2000, as well as
9 telephone messages that were left for you the previous
10 week."

11 And it goes on, in the body of the letter, he
12 goes on to say: "And decision from the appeals committee
13 should have been made on or before March 30, 2000.
14 However, as of the date of this letter, my office has not
15 received any notification relative to her eligibility to
16 receive long-term disability payments."

17 So obviously, at that time, he was not aware of
18 the February 21, 2000 decision.

19 Q And in the final paragraph -- and just for the
20 reference, Mike, if you haven't identified it yet, has a
21 Bates number 120.

22 MR. BURNS: Got it.

23 BY MR. DORRANCE:

24 Q And it says, the final paragraph, well, why don't
25

1 you read the rest, why don't you read the remainder of the
2 letter, please?

3 A Of that April 7 letter?

4 Q Please.

5 A "I would appreciate it if you would contact my
6 office upon the receipt and review this correspondence to
7 discuss this matter in greater detail. Your anticipated
8 cooperation is appreciated." And it's signed by Steven
9 Courtney.

10 Q Correct me if I am wrong, I think you added as
11 the fourth word in that quote, the word it. And there is
12 no it in that sentence, is that right? At least it
13 sounded like that. I'm just trying to be accurate here.

14 A Yes. Do you want me to read that sentence again?

15 MR. DORRANCE: That's fine. I think it speaks
16 for itself, don't you, Mike?

17 MR. BURNS: I've been told by greater lawyers
18 than myself never to let a document speak for itself. Why
19 don't you repeat it?

20 MR. DORRANCE: Well said. I guess read the first
21 sentence again that you previously read.

22 A Okay. I would appreciate it -- oh, I'm sorry.
23 Yes, you are right. "I would appreciate if you would
24 contact my office upon your receipt and review of this
25

1 correspondence to discuss this matter in greater detail."

2 MR. DORRANCE: Thank you.

3 MR. BURNS: Thank you.

4 BY MR. DORRANCE:

5 Q And then it's your understanding that Ms.
6 Clark's April 12, 2000 letter followed; is that right?

7 A Correct.

8 Q Do you have any document confirming that your
9 final decision that we've marked Sauerhoff Exhibit 1 was
10 received by Mr. Courtney?

11 A No. It was mailed. And I was looking at the
12 address, which looks to be the same address on
13 Mr. Courtney's letterhead. It wasn't sent certified mail
14 or signed receipt or anything. So I had no knowledge
15 otherwise that it wasn't received.

16 Q On what do you base your statement that it was
17 mailed on the date indicated on your letter?

18 A Correct. It was mailed February 21, 2000.

19 Q Are you referring to something?

20 A No, I mean, just the date of my letter. When I
21 type my letter and sign it, I put it in an envelope and
22 send it out at that point.

23 Q Do you customarily send it by certified mail
24 or --

25

1 A No. Normally, it's sent regular mail. I just
2 put it in a mail to be picked up slot.

3 Q You don't have any proof that Mr. Courtney
4 received your letter when it was sent?

5 MR. BURNS: I'll object to the form of the
6 question because it's very broad, and it requires her to
7 know what Mr. Courtney knows or doesn't know. But there's
8 a presumption in terms of mailing. But again, if you
9 understand the question, you can answer it, Ms. Sauerhoff.

10 A Again, all I would have done was signed and
11 mailed the letter and put it in the mail slot to be picked
12 up. What happens beyond that, I would have no knowledge.

13 BY MR. DORRANCE:

14 Q I call your attention to the document that's been
15 marked as Exhibit E and attached to the amended complaint.
16 It purports to be a one-page letter dated January 3, 2000,
17 from Laura Collins to Steve Courtney. I'm trying to
18 locate the Bates numbering of it.

19 A You are talking about January 3, 2000, a letter
20 from Laura Collins to Steven Courtney?

21 Q Yes.

22 A Okay. I've located it.

23 Q I call your attention to the fourth paragraph.

24 MR. BURNS: Let's just get the Bates number on
25

1 record so we have it.

2 MR. DORRANCE: Okay. What is it, do you have it?

3 MR. BURNS: No. I have a December 3rd letter,
4 but I don't have a January 3rd, December 3rd, not a
5 January 3rd. What does the letter say?

6 MR. DORRANCE: I'll ask a general question and
7 then I'll ask a specific question about the letter.

8 A Michael, you are still trying to locate the
9 letter, right?

10 MR. BURNS: Yes. What is it?

11 A It says, Dear Mr. Courtney, today we received
12 your letter along with a letter from Stephen B. Wolf dated
13 December 22nd, 1999.

14 MR. BURNS: I'll find it, go ahead.

15 BY MR. DORRANCE:

16 Q It's my understanding that generally speaking,
17 the appeals committee must issue a ruling within 60 days
18 after its receipt of a claimant's appeal, is that correct?

19 A Yes. Or if additional time is necessary or
20 further information is necessary, then we are obligated to
21 inform the claimant that an additional 60 days may be
22 required.

23 Q Do you have any indication in your file that you
24 notified the claimant that an additional 60 days was
25

1 required to reach a decision?

2 A No. We received the appeal and logged it in and
3 rendered our decision on February 21st, 2000.

4 Q Does the January 3, 2000 letter that we've been
5 referring to indicate, quote, the committee will notify
6 you in writing if the additional time is required, period,
7 end of quote?

8 A Correct. But, it's my understanding that a
9 decision was rendered before that period.

10 Q Now, do you recall in reviewing your file,
11 whether Mr. Courtney had asked Ms. Collins for specific
12 written job descriptions of the jobs which CNA felt Ms.
13 Tesche was capable of performing?

14 A Yes, I do recall a letter. I'm looking now to
15 see.

16 Q I recall it was a two-page letter. I'm looking
17 for it also. It's Bates no. 178 and 179 and 180. It's a
18 three-page letter. It's dated September 14, 1999.

19 A Just one second.

20 MR. BURNS: Right before that last document that
21 we looked at, the physical capacity restrictions forms,
22 about three or four ahead of those, Cheryl.

23 A Okay. I think I found it. You said a letter
24 dated September 14, 1999, from Mr. Courtney to CNA?

25

1 BY MR. DORRANCE:

2 Q Yes.

3 A It had an authorization attached from Ms. Tesche.
4 I do see that.

5 Q And on the second page of that document with a
6 Bates number 179, specifically numbered paragraph five,
7 does Mr. Courtney ask Ms. Collins to provide, quote, the
8 complete job descriptions for the jobs of telemarketer,
9 customer service representative, motel night auditor, and
10 automobile rental agent, which you referenced in your July
11 26, 1999 letter, including all duties involved in such
12 jobs, end quote. Is that an accurate quote of that
13 request?

14 A Yes, it is.

15 Q And to your knowledge, did Ms. Clark respond to
16 that request?

17 A She responded on October 12, 1999.

18 Q And what was her response?

19 A All right. Hold on. Wait one second. I'm
20 looking at copies of letters. Just one minute. Actually,
21 there was a response from Ms. Collins On October 7th. But
22 Mr. Courtney reminded them that he still needed to see the
23 complete job descriptions. And then October 25, 1999, Ms.
24 Collins replied to that specific request.
25

1 Q And when you say Mr. Courtney reminded her that
2 she hadn't provided the descriptions, I believe you were
3 referring to an October 12, 1999 letter with a Bates
4 number of 173 directed to Ms. Collins; is that correct?

5 A Correct.

6 Q And actually, it's authored by another lawyer in
7 Mr. Courtney's firm by the name of Clark Devere, that's
8 D-E-V-E-R-E; is that correct?

9 A Correct.

10 Q And then the letter that you also referred to was
11 an October 25, 1999 letter to Mr. Devere from Ms. Collins;
12 is that right?

13 A Correct.

14 Q With a Bates number of 172. And in response to
15 Mr. Devere's request, Ms. Collins notes, quote, the job
16 descriptions for the occupations noted are available in
17 the dictionary of occupational titles available at your
18 local library, period, end quote. Is that correct?

19 A Correct.

20 Q Does CNA customarily assist the claimant and her
21 attorney in providing information about job descriptions?

22 MR. BURNS: Object to the form of the question
23 and the use of the word customarily, it's not defined.
24 But you can answer the question if you understand it.
25

1 A I'm sorry. Could you repeat the question? I
2 missed the first couple words.

3 BY MR. DORRANCE:

4 Q Sure. In reviewing applications for long term
5 disability benefits, does CNA customarily assist the
6 claimant and her attorney in providing job descriptions?

7 MR. BURNS: I note the same objection. But you
8 can answer it, Ms. Sauerhoff.

9 A Well, normally, I can tell you this response is
10 not what we would normally say. If somebody asked for
11 information from the claim file, we would provide that
12 information. So if you would ask for job descriptions, we
13 would have provided that information.

14 BY MR. DORRANCE:

15 Q So CNA did not follow its customary procedures in
16 sending this letter?

17 MR. BURNS: I'm going to object to that question
18 on the basis that it calls for a legal conclusion and
19 misrepresents her statement. But you can answer it, if
20 you understand it, Ms. Sauerhoff.

21 A What I'm saying is, if you had asked for the job
22 duties or the specifics of the occupations that were
23 listed in the denial or termination letter, we normally
24 would not tell you go look at the DOT in your legal
25

1 library. We would either provide you those pages, or the
2 vocational consultant would provide the information relied
3 upon in the vocational assessment for your review.

4 BY MR. DORRANCE:

5 Q Do you know whether or not CNA provided Ms.
6 Tesche and her lawyer with the information provided by the
7 vocational case manager?

8 A Just a second. Let me take a look at the file
9 activity sheet. Based on Ms. Collins' entry on the file
10 activity sheet dated October 25, 1999, she had said letter
11 received from attorney on October 12, requesting copies of
12 job description for -- it says R-E-V, review or referred
13 jobs, I'm not quite sure what that means -- but voc.
14 review jobs. Advised by fax letter to obtain local
15 library. So it looked like Ms. Collins -- I don't see
16 where she consulted anybody. I just see her name and that
17 entry indicated, that the decision was not to provide that
18 information, to refer the attorney to the local library
19 for that information.

20 Q Is there any indication of whether Ms. Tesche or
21 her attorney were provided with the findings of the
22 vocational case manager?

23 A I did see an entry of October 7, 1999, where Ms.
24 Collins is indicating she received the attorney letter,
25

1 Clark Devere, on September 20, requesting information to
2 prepare for appeal, sent copy of policy, copy of medical,
3 initial claim forms, correspondence, and vocational
4 assessment, along with own occupation termination letter.
5 So the own occupation assessment or any occupation
6 assessment was sent.

7 Q And which document would that have been?

8 A That would have been Mr. Gullidge's typed any
9 occupation assessment of June 9, 1999.

10 Q Do you have any indication whether or not Ms.
11 Tesche or her lawyer were provided with any findings by
12 the nurse case manager?

13 A Again, I can only indicate what Ms. Collins
14 indicated on October 7, 1999, that was provided. She
15 doesn't say specifically nurse case manager notes, but I
16 don't know if that means she did or did not send them.

17 Q Actually, since we have been referring to this
18 file activity sheet, I think we should make it part of the
19 record. You are referring to, I guess, a continuation of
20 the file activity sheet that we previously made an
21 exhibit; is that correct?

22 A Correct.

23 MR. DORRANCE: And this would be Bates numbered
24 129, Mike, I believe.
25

1 MR. BURNS: Yes, got it. Thanks.

2 BY MR. DORRANCE:

3 Q Got it. And it's a one-page document, to my
4 knowledge; is that correct?

5 A Correct.

6 Q And on the far left side the initial date
7 recorded is 10/7/99; is that correct?

8 A Correct.

9 Q And the last date referenced is 2/21/00; is that
10 correct?

11 A Correct.

12 (File activity sheet marked as Sauerhoff Exhibit
13 Number 4.)

14 BY MR. DORRANCE:

15 Q I guess the last two entries on that -- we'll
16 make this Exhibit 4, I believe. And you identified this
17 as the continuation of the file activity sheet?

18 A Correct.

19 Q And you made two entries on this document we've
20 marked Exhibit 4; is that correct?

21 A Yes.

22 Q And the first one you might have already
23 testified to, does that abbreviation stand for
24 acknowledgement received appeal?
25

1 A Actually, it's appeal committee -- the AC stands
2 for appeal committee received appeal. And then I signed
3 my name to that.

4 Q And that's dated 1/3/2000?

5 A Correct.

6 Q Now, Ms. Tesche's attorneys had sent previous
7 correspondence to CNA; is that correct?

8 A Correct. There was previous correspondence with
9 Ms. Collins.

10 Q Is there any significance to that January 3, 2000
11 date as to you receiving a specific document?

12 MR. BURNS: I'm going to object to the form of
13 the question. It's a little unclear.

14 A I'm sorry. Which one are we talking about?

15 BY MR. DORRANCE:

16 Q I think I answered my own question. We are
17 talking about -- I'm trying to find out a little bit more
18 about your entry on January 3, 2000, and what documents,
19 if any, you received on that date. If you are able to
20 tell, do you know what documents you received on that
21 date?

22 A Okay. I think on January 3, 2000, I would have
23 received the entire file. In other words, the appeal has
24 now been perfected and has come before the appeals
25

1 committee. I think the entries going up to December 3,
2 1999, Ms. Collins indicates that she did receive an appeal
3 request from the attorney.

4 She called to confirm, but then the attorney
5 indicated that he wished for her to wait for an additional
6 medical information. And I think that's from Dr. Wolf.
7 And that's what the significance was of January 3, 2000,
8 is they have now received Dr. Wolf's letter, and it's okay
9 to proceed with the appeal.

10 Q In terms of the claimant timely perfecting the
11 appeal, does that start with your receipt of the December
12 3, 2000 letter in this case?

13 MR. BURNS: I'll object to the form of the
14 question to the extent it calls for a legal conclusion.
15 But you can answer it, Ms. Sauerhoff.

16 A Well, actually, the appeal would have been
17 perfected as of the date that Dr. Wolf's letter was
18 received by CNA. And that looks to be January 3, 2000.

19 MR. DORRANCE: I'm looking for an earlier letter
20 from either Mr. Courtney or Mr. DeVere where he confirms
21 that he wants you to treat this as an appeal of the
22 initial determination. I believe it was in November of
23 '99.

24 MR. BURNS: 157, Bates no. 157?
25

1 MR. DORRANCE: 157?

2 MR. BURNS: Is that the one you are talking
3 about?

4 BY MR. DORRANCE:

5 Q I'm shifting back and forth between the amended
6 complaint exhibits and the Bates numbered documents. Yes,
7 it purports to be a December 3, 1999 letter, purporting to
8 be sent via facsimile and regular mail from Mr. Courtney
9 to Laura Collins. Do you have that document?

10 A Was that November 3, 1999?

11 Q December 3, 1999?

12 A Just a second. Yes. I do have a letter from
13 Mr. Courtney to Ms. Collins dated December 3, 1999.

14 Q And is this considered an appeal of the initial
15 decision?

16 A Well, what this is indicating -- and I think Ms.
17 Collins clarifies in a telephone conversation with
18 Mr. Courtney of that same date -- that Mr. Courtney is
19 exercising appeal rights, but he is still waiting for
20 additional medical information from Dr. Wolf. And as soon
21 as he receives it, he'll forward it on to our attention.
22 And what Ms. Collins did is she did call Mr. Courtney on
23 December 3, 1999.

24 She says she called the attorney. He indicates
25

1 he will be forwarding medical information from claimant's
2 physician, and as soon as it's received, he hopes to have
3 it by next week, will hold appeal until received. So at
4 that point, we take that as perfecting the appeal.

5 Q Do you consider updated medical records in making
6 your decision as a member of the appeals committee?

7 A Well, we consider any information that the
8 claimant and/or their representative wish to submit. In
9 other words, somebody can exercise their appeal rights;
10 but if they say, well, hold it, I've got something else
11 I'm having done next week and I want that made part of the
12 review, then at that point we will either extend that
13 extension or waive it so we won't conduct our appeal until
14 it's perfected. And that would be the date of receipt of
15 additional information.

16 Q So the answer is you consider any evidence
17 provided by the claimant, including any updated medical
18 records?

19 A While it's pending appeal, correct.

20 Q And in your capacity as a member of the appeals
21 committee, or I should say, when you are serving as the
22 sole decider as the appeals committee, do you ever contact
23 the claimant or the claimant's attorney and ask for
24 additional information or clarification?

25

1 MR. BURNS: I just object to the form to the
2 extent it's not relevant. You can answer it if you want,
3 Ms. Sauerhoff.

4 A Yes. In reviewing the file, if we feel there is
5 a pertinent piece of information or need for
6 clarification, yes, we have that authority, or we have the
7 ability to speak to anybody regarding that or call the
8 doctor or the claimant for that information if we feel
9 that is necessary.

10 BY MR. DORRANCE:

11 Q And it's my understanding that you didn't do that
12 in this particular case?

13 A Right. I felt that the information presented in
14 its totality supported the company's position that Ms.
15 Tesche had the ability and capability of performing the
16 occupations as identified.

17 Q I turn your attention back to Exhibit 1 which was
18 your decision, last paragraph on page one.

19 A Just one second. Okay.

20 Q The second sentence begins, quote, based on the
21 claimant's -- actually I'll read it. Quote, based on the
22 claimant's age, experience, geographic location, salary,
23 education and the medical restrictions given by the
24 treating physician, it was determined that the claimant
25

1 was not totally disabled from any occupation, period, end
2 of quote.

3 Those factors that I just quoted -- actually,
4 I'll rephrase the question. Based on your experience as a
5 CNA representative, as well as your experience working for
6 the Social Security Administration, are the factors that I
7 just identified the factors used by the Social Security
8 Administration in deciding whether to award Social
9 Security disability benefits?

10 A Well, again, we are going back. I haven't been
11 with Social Security in 10 years, but they do look at
12 economic parity. They look at age and education,
13 experience. I think those are pretty much the same
14 factors.

15 Q I turn your attention to the second page of your
16 letter, and you refer to the job classification or the
17 physical classification of, quote, sedentary, end of
18 quote. Do you see that reference?

19 A Yes.

20 Q How do you define that phrase, if you know?

21 A Sedentary?

22 Q Yes.

23 A Sedentary would be the ability to lift up to 10
24 pounds on a continuous basis, ability to sit for up to
25

1 six, seven hours a day. It usually refers to occupations
2 that don't require a lot of physical or manual exertion.
3 In other words, a lot of your clerical-type occupations
4 are sedentary.

5 Q If you know, is that definition used by the
6 Social Security Administration?

7 A Well, sedentary is in the dictionary of
8 occupational titles, that physical category. And I
9 believe that is used within the Social Security
10 administration.

11 Q Does CNA use the dictionary of occupational
12 titles in reviewing disability claims?

13 A I believe that's -- I'm not sure what the
14 vocational consultants utilize, but I know they do have a
15 dictionary of occupational titles.

16 Q The next paragraph talks about Dr. Rubenstein's
17 records. Now, this particular case, you are referring in
18 that paragraph to Dr. Rubenstein's records and you are
19 stating that those records do not support a less than
20 sedentary status, whether in 1999 or previous to this
21 time, is that correct, in the first sentence?

22 A Correct.

23 Q Is there a customary period of time in obtaining
24 medical records -- actually, let me rephrase that. If the
25

1 last medical records that you have are, say, six months or
2 more old when you are reviewing a file, is it customary
3 for you to obtain updated records and updated statements
4 from the physician to make your decision?

5 MR. BURNS: Objection just to the
6 characterization and the use of the word customary. But
7 if you understand the question, you can answer it.

8 A I believe that's what the nurse case managers
9 were doing in March of 1999 and May of 1999 to find out
10 the permanent restrictions and medical stability and so
11 forth so they can prepare to determine if the claimant is
12 disabled from any occupation. And, of course, if there is
13 any changes to that, then it would be the claimant's
14 obligation -- or the doctor's obligation -- to identify
15 information contrary to what those restrictions and
16 limitations are.

17 BY MR. DORRANCE:

18 Q Now, you referred to the nurse case managers
19 reviewing records, most recently in April of 1999, I
20 believe you said; is that right?

21 A well, in May of 1999, latter part of May,
22 everything leading up to the vocational any occupation
23 assessment which was performed very early part of June,
24 1999.

25

1 Q And you made your decision on or about February
2 21, 2000?

3 A Well, the appeals decision was on that date.

4 Q And when did you make your decision?

5 A I'm with the appeals committee. My decision was
6 February 21, 2000.

7 Q And your entry on Exhibit 4 indicates, quote,
8 appeal upheld and letter drafted, end quote.

9 A Correct.

10 Q Other than your February 21, 2000 letter, is
11 there any document which details the results of your
12 investigation and your findings?

13 MR. BURNS: I object to it, compound. But you
14 can answer it, if you understand it.

15 A My letter of February 21, 2000, would be the
16 results of my review of the entire claim file, along with
17 the policy.

18 BY MR. DORRANCE:

19 Q And I apologize if I've already asked you this
20 question. You didn't discuss this case with any CNA
21 employee in rendering your decision?

22 A No, I did not.

23 Q You stated that it's the claimant's obligation to
24 provide any updated medical records.
25

1 A well, any information --

2 MR. BURNS: I object to the question as asked and
3 answered, but also object to the form of the question as
4 mischaracterization. But you can answer it.

5 MR. DORRANCE: Okay, let me rephrase it.

6 MR. BURNS: I thought we went through this
7 already.

8 MR. DORRANCE: Did we? I --

9 MR. BURNS: Your first question was it the burden
10 of the Plaintiff to prove a disability. And we talked
11 about it.

12 MR. DORRANCE: I withdraw the question. Bear
13 with me here, just a few more questions.

14 BY MR. DORRANCE:

15 Q Ms. Sauerhoff, have you had other cases where you
16 consulted with fellow members of the appeals committee in
17 making a decision?

18 A Yes, I have.

19 Q Have you had other cases where you've asked the
20 claimant or her attorney to provide clarification on
21 medical -- on the issue of disability?

22 A Yes, I have.

23 Q Is that your customary practice?

24 MR. BURNS: I'm going to object to that
25

1 conclusion predicated on the fact that characterization
2 may be mischaracterization. But you can answer, Ms.
3 Sauerhoff.

4 A Each case is based upon the merits of the case
5 and the evidence produced and the policy applicable to
6 that case. So, if there is a case being reviewed where it
7 may not be as clear or there's further information that
8 might help further clarify, then obviously, you know, that
9 would -- we have the opportunity to request further
10 information or to clarify. But in Ms. Tesche's case, I
11 felt the evidence was very clear. The information
12 presented spoke for itself, and I concurred with the any
13 occupation assessment.

14 BY MR. DORRANCE:

15 Q Same page of your letter talks about Dr. Wolf not
16 providing sufficient detail, the reasons why he felt Ms.
17 Tesche was totally disabled from all employment.

18 A I think what Dr. Wolf indicated is that he did
19 not feel Ms. Tesche was employable in those occupations.
20 But I didn't see any evidence to refute that she wasn't
21 able to perform those occupations.

22 Q And I may have asked you this, I apologize. You
23 didn't ask for any additional detail on that question from
24 Dr. Wolf?

25

1 MR. BURNS: Objection, asked and answered. But
2 you can answer it, Ms. Sauerhoff.

3 A We didn't ask the doctor is she disabled any
4 occupation. We asked for medical evidence, restrictions,
5 and her limitations. And then the any occupation
6 assessment was performed by our vocational consultant.

7 BY MR. DORRANCE:

8 Q Does the appeals committee ever convene as a
9 whole in making final decisions?

10 A We do on occasion. Again, depending on the case
11 presented, the evidence, and policy provisions to that
12 specific case.

13 Q If you are able to estimate, what percentage of
14 cases are decided by one member of the appeals committee?

15 MR. BURNS: I'm going to object to the extent
16 that she doesn't have personal knowledge of that fact.
17 But if you do have personal knowledge, you can respond to
18 that question.

19 A I know a majority of our cases are reviewed
20 independently. We have -- I couldn't tell you how many
21 meetings, but not a lot of meetings on every case.

22 BY MR. DORRANCE:

23 Q Let's just say -- and again, this is an estimate,
24 only if you are able to provide one. Assume a given 100
25

1 cases on appeal to the appeals committee. What percentage
2 of those 100 cases would be decided by one individual?

3 MR. BURNS: I'm going to object to that. I think
4 that that calls for complete speculation, and I don't
5 think it is appropriate for her to comment. Of course, if
6 you have personal knowledge of the actual figures as
7 opposed to estimates, I wouldn't mind. You can testify to
8 that, Ms. Sauerhoff.

9 A No. I don't have any personal knowledge to
10 actual figures.

11 BY MR. DORRANCE:

12 Q would you be able to estimate how many cases you
13 handled as a member of the appeals committee?

14 A well, in my career with the appeals committee,
15 I'm sure it's been hundreds or so.

16 Q And of that percentage -- of that number, that
17 estimate, what percentage have been decided by you alone?

18 A I would just say a vast majority of the cases are
19 decided independently.

20 Q When you say independently, you mean by one
21 person?

22 A Correct.

23 (Brief pause.)

24 BY MR. DORRANCE:
25

1 Q I appreciate your patience. I'm looking at a
2 document from Laura Collins dated July 26, 1999, directed
3 to Joan Tesche. The Bates number on that is 182.

4 A Is that the letter advising Ms. Tesche of her
5 maximum 24 months for disabilities from her own
6 occupation?

7 Q Yes.

8 A Okay.

9 Q Do you have that in front of you?

10 A Yes, I do.

11 Q Is this the final decision on whether Ms. Tesche
12 can receive continuing own occ. benefits?

13 A No. This is notification. Because Ms. Collins
14 said at the end of that: We will continue to monitor your
15 medical condition and treatment through the
16 duration of your claim for any change in your condition.
17 This isn't the letter advising her that no further
18 benefits are payable. I think that came in October.

19 Q Was that the October 7th letter from Laura
20 Collins?

21 A Correct.

22 MR. DORRANCE: I have no further questions.
23 Thank you for your patience.

24 MR. BURNS: I have one follow-up question. But
25

1 I've got to lay a few foundation questions before I get
2 there. So it's going to take about a minute.

3
4 CROSS EXAMINATION

5
6 BY MR. BURNS:

7 Q Are you ready? I hope you don't have to go back
8 to your documents, Ms. Sauerhoff. But the determination
9 that you made which was recorded in a correspondence dated
10 February 21, 2000, there was a suggestion back there that
11 this document was not received by Mr. Courtney and then
12 there were questions about whether or not you mailed that
13 document.

14 Now referring to the file activity sheet and, in
15 particular, your entry of February 21, 2000, wherein it
16 states appeal upheld and letter drafted. Ms. Sauerhoff,
17 based upon that entry and the file activity sheet on
18 February 21, 2000, did you have a standard practice that
19 would indicate that the letter was also mailed on that
20 same date?

21 A Yes. When I indicate that upheld and letter
22 drafted, I personally type my own letters and then sign
23 them and mail them out that same day.

24 Q So that it would be your usual practice to note
25

1 in the claim file or the administrative record when you
2 actually sent, signed, and mailed the letter?

3 MR. DORRANCE: Objection to the use of the word
4 usual. You may answer.

5 A Yes.

6 BY MR. BURNS:

7 Q And based upon that entry, is it your testimony
8 here today that your letter dated February 21, 2000, which
9 was a determination of an appeal made by Ms. Tesche, was
10 mailed on November 21, 2000, to Mr. Courtney, her lawyer?

11 A It was mailed on February 21, 2000.

12 MR. BURNS: Thank you. No further questions.

13 MR. DORRANCE: One follow-up.

14
15 REDIRECT EXAMINATION

16
17 BY MR. DORRANCE:

18 Q Do you generally record all significant findings
19 in the record?

20 A I'm sorry. I don't --

21 Q Do you generally record significant findings in
22 the progress record that you maintain?

23 A You mean on the file activity sheet?

24 Q I'm sorry. File activity sheet.

25

1 A Yes. That would be like the directions, the file
2 plan, any actions that were taken on the claim. If
3 further information was requested, we would record those
4 actions on the file activity sheet. The nurse case
5 manager does the same on the nurse case manager database.

6 Q So important actions are recorded in the file
7 activity sheet?

8 MR. BURNS: Object to the form of the question
9 based upon her prior testimony. It mischaracterizes it.
10 But you can answer it.

11 A Actions that are taken -- I mean, it may not
12 record every time somebody calls on the status of a claim,
13 or something like that. But if there was pertinent
14 information or we call the doctor's office to verify this
15 or call the claimant for an interview, that would be
16 documented.

17 BY MR. DORRANCE:

18 Q Or if you'd ask Dr. Wolf for a clarification
19 concerning his opinion, would that be documented?

20 MR. BURNS: Objection. You are now getting way
21 beyond the scope of redirect.

22 MR. DORRANCE: Well, I think it all goes to
23 reliability of recordkeeping.

24 MR. BURNS: I don't think it does.
25

1 MR. DORRANCE: Well, you are trying to establish
2 presumptions; so am I.

3 MR. BURNS: Well, I think there's a legal
4 presumption that I'm entitled to take in terms of the
5 record. And all I was establishing was a foundation for
6 the legal presumption that if it was mailed and delivered
7 on that date. I wasn't getting into the question about
8 the credibility of the record.

9 MR. DORRANCE: Well, I think it necessarily
10 implicates it.

11 MR. BURNS: I'll object to the form of the
12 question. I'll object on the basis that it is beyond the
13 scope of my redirect examination or my examination. And
14 you can answer it, Ms. Sauerhoff. Do you remember what it
15 was?

16 A Yes, I think I do. If I had contacted or if
17 anybody had contacted Dr. Wolf for clarification or
18 further information regarding is Ms. Tesche disabled from
19 any occupation, there would have been an entry or
20 documentation of that conversation or response or attempt.

21 BY MR. DORRANCE:

22 Q And I take it that if anyone, including yourself,
23 had contacted Ms. Tesche's lawyer and asked for additional
24 information, that would have been recorded as part of the
25

1 your customary protocol?

2 MR. BURNS: Same objection, and also to the form
3 of the question in terms of customary protocol. But you
4 can answer it.

5 A Yes, it would have been documented.

6 BY MR. DORRANCE:

7 Q Your entry on the 21st of December -- I'm sorry.
8 Your entry on February 21, 2000, states letter drafted; is
9 that correct?

10 A Yes, it does.

11 Q It does not say letter mailed; is that correct?

12 A No. But when I draft a letter, I'm typing it and
13 I'm mailing it.

14 Q So the answer is no?

15 MR. BURNS: Objection. Her answer was as it
16 speaks.

17 BY MR. DORRANCE:

18 Q Does your entry indicate whether or not you
19 mailed the document?

20 A The entry doesn't indicate that I mailed the
21 document. But I know that when I say I drafted the
22 letter, me, personally, typed the letter and I sent it out
23 to be mailed.

24 Q Do you ever write drafted and mailed?

25

1 MR. BURNS: I'm just going to call for
2 speculation, and it's not relevant. But you can answer it
3 if you understand it.

4 A I know personally, when I write, I just put
5 letter drafted. And drafted to mean to me -- when I say I
6 drafted something, I typed it and I mailed it that date or
7 else my date wouldn't reflect that I completed the review
8 at that time.

9 BY MR. DORRANCE:

10 Q Is it fair to say that someone reviewing this
11 entry that you've made could come to the conclusion that
12 all you'd done was drafted a letter?

13 MR. BURNS: Objection. That calls for
14 speculation based upon her prior testimony. And I think
15 it mischaracterizes her testimony, or attempts to
16 mischaracterize her testimony. But if you understand it,
17 you can answer it, Ms. Sauerhoff.

18 A When I say appeal upheld and letter drafted, I
19 mean that, on that date, my letter is done, that
20 decision's reached, and I completed that file. And so my
21 letter's gone out that day, even though I don't indicate
22 it was mailed.

23 BY MR. DORRANCE:

24 Q To your knowledge, is that the way all members of
25

1 the appeals committee record their entries as to whether a
2 decision has been mailed?

3 MR. BURNS: I'm going to object to relevance.
4 But you can answer it.

5 A Well, how we record that our decision's been
6 completed is we enter that on -- we have a docket, an
7 appeal tracking system that we record. And on that date,
8 when it says appeal completed, that means that letter's
9 done, that file -- the review is completed, that letter is
10 out of the building. I mean we put it in the mail slot to
11 be picked up.

12 BY MR. DORRANCE:

13 Q I'm not referring to when it says appeal
14 completed. I'm referring to the phrase "letter drafted."
15 Is that a common term used to confirm that a letter has
16 been mailed out?

17 A No. And I believe I'm probably the only one
18 appeal committee member that even used that terminology.
19 It was just specific to me, to what I was doing. And I
20 was typing a letter and I was mailing it, even though I
21 don't indicate mailed.

22 MR. DORRANCE: Thank you very much.

23 (The deposition was concluded at 3:30 p.m.)
24
25

1 STATE OF PENNSYLVANIA : SS.

2 COUNTY OF DAUPHIN :

3
4 I, Virginia Loria, a Reporter Notary-Public,
5 authorized to administer oaths within and for the
6 Commonwealth of Pennsylvania and take depositions in the
7 trial of causes, do hereby certify that the foregoing is
8 the testimony of CHERYL SAUERHOFF.

9 I further certify that before the taking of said
10 deposition, the witness was duly sworn; that the questions
11 and answers were taken down stenographically by the said
12 reporter Virginia Loria, a Reporter Notary-Public,
13 approved and agreed to, and afterwards reduced to
14 typewriting under the direction of the said Reporter.

15 I further certify that the proceedings and
16 evidence contained fully and accurately in the notes taken
17 by me on the within deposition, and that this copy is a
18 correct transcript of the same.

19 In testimony whereof, I have hereunto subscribed
20 my hand this 13th day of December, 2001.

21 
22 Virginia Loria, RPR

23 My commission expires:

24 May 8, 2002
25

CNA GROUP BENEFITS

Group Disability-Claim Administration
PO Box 946710 Maitland FL 32794-6710

Cheryl Sauerhoff
Claims Consultant
Telephone 1-800-303-9744 x 6343

February 21, 2000

Steven Courtney
Metzger, Wickersham, Knauss & Erb, PC
3211 North Front St.
PO Box 5300
Harrisburg, PA 17110-0300

Claimant: Joan Tesche

Claim No: 94-34900P1702
Policy No: 0083089679

Dear Mr. Courtney:

The Long-Term Disability claim of the above-mentioned claimant has been referred to Appeals pursuant to the receipt of your letter. A comprehensive review of the file has been completed and the results of the review do not alter the Company's original decision to terminate benefits.

The Long Term Disability Policy indicates that during the 180-day elimination period and the 24-month Employee Occupation period, the Insured Employee, because of Injury or Sickness is:

- *Continuously unable to perform the substantial and material duties of the regular occupation;*
- *Under the regular care of a licensed physician other than the Insured Employee; and*
- *Not gainfully employed in any occupation for which you are or become qualified by education, training or experience.*

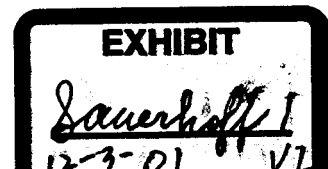
After the Monthly Benefit has been payable for the Insured Employee Occupation period of 24 months, "Total Disability" means that, because of Injury or Sickness, the Insured Employee is:

- *Continuously unable to engage in any occupation for which he is or becomes qualified by education, training or experience; and*
- *Under the regular care of a licensed physician other than himself.*

The date of loss was 5/3/97. The attending physician statement was completed by Dr. Rubenstein dated 9/19/97 for a diagnosis of "chronic back pain". Ms. Tesche's occupation is noted as systems procedure analyst. The noted restrictions are cannot perform heavy lifting, climbing, bending and tolerates prolonged sitting poorly.

The claimant was found to be disabled from her occupation and paid benefits for the 24 month own occupation period commencing after the 180-day elimination period. Based on the claimant's age, experience, geographic location, salary, education and the medical restrictions given by the treating physician, it was determined that the claimant was not totally disabled from any occupation. Those occupations were detailed in the 10/7/99 letter and will not be revisited at this time.

Exhibit "F"



Policy No: 0083089679

-2-

All information has been reviewed and indicated that the claimant is not less than sedentary in the physical demand level for occupational work. The medical documentation does not reflect this level of severity.

The information submitted by Dr. Rubenstein does not support a less than sedentary status, whether in 1999 or previous to this time. Dr. Rubenstein's records, in particular, dated 1997 and 4/17/98 state that the claimant is actively searching for work within her physical limitations. His rendition of the claimant's physical capacity to perform shows standing up to one hour, sitting for one half hour, lifting and carrying 10-20 pounds, and walking for 3 hours per day. He claims that these limitations are "the patient's self-prescribed limitations". In 8/1997, the claimant was considered able to perform at a modified light medium physical capacity level by a physical therapist and Dr. Hartman.

Dr. Wolf was requested to give permanent restrictions for the claimant and on 5/11/99 he states that the claimant can sit and stand for one half hour at a time, lift 5 to 10 pounds, walk for 15 minutes and no bending, crawling, squatting. The claimant states that she could not perform her own occupation due to the prolonged sitting and after discussing this with the claimant, the vocational experts detailed occupations that would give the claimant the versatility to move about freely as she needs and are within the permanent restrictions outlined by Dr. Wolf. Dr. Wolf states that she could not return to her own occupation. The letter dated 12/22/99 from Dr. Wolf states that he feels that the occupations described would not be options for the claimant but does not state why. There is no detail of any functional impairment or any information relating to the claimant's inability to perform her activities of daily living.

While we appreciate Dr. Wolf's opinion, the any occupation determination is a vocational determination based on the claimant's permanent medical restrictions, geographic location, economic parity, age, experience, and education.

Therefore, based on the information contained within your claim file, we find that the decision to terminate benefits was correct and proper. You have exhausted your administrative remedies at this time and this decision is final and binding.

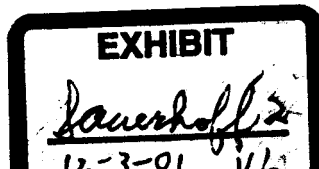
Sincerely,

Cheryl Sauerhoff
Appeals Committee Member

File Activity Sheet

Claim Number: 94-34900	Claimant: Jean D. Tesche
DOH: 5/2/88	OX: Chr. B Pain
	SDI? <input checked="" type="radio"/> Y N AMT: 409.13
EFF DT COV: 1/1/95	NORM:
	ER %: 100 ELIM. PERIOD: 180
ELIG. PERIOD:	OCC: S+Paralyt ^{assist}
	ER CONTACT: Judi / Melissa
LDW: 5/2/97	CLASS: 1
	ER PH. NO: (717) 592-4206
DOL: 5/2/97	SALARY: ?
	CLMT'S PH. NO: (717) 469-1151
AGE AT DOL: 42	WIC? Y <input checked="" type="radio"/> N AMT:
	DON: 10/9/97
PRE-X STD: Y <input checked="" type="radio"/> N	PRE-X LTD: Y <input checked="" type="radio"/> N
	CNA STD: Y <input checked="" type="radio"/> N CNA LTD: <input checked="" type="radio"/> Y N

DATE	ACTIVITY
10/14/97	Ncm + ds Conf. ds to contact ER conc. job reg. and salary as dt given for salary is 5/5/97, dol 5/3/97. L. Collins
10/17/97	Lm for ER as above. L. Collins
10/28/97	Recd Sal fr. ER \$2229.50 eff 5/8/95.
11/5/98	Ncm + DS "Conf. Slw clmt. Ncm to contact ER for current status. DS Sw Greg Lutz Sup. Concerning accommodations. See attached for interview w/ clmt. L. Collins
	nem to follow for ERW.
11/4/98	Issued benefits through current. Will send LTR, cc er. L. Collins
	advised sup of status + possible accommodations once restrictions known. L. Collins
7/27/98	Faxed questions to Dr. Rubenstein w/ JAS. flu same 2 weeks L. Collins
2/9/99	Recd updt from Ncm. Unable to obtain DS. form or contact clmt. Snap out sent requesting there been. Dring two weeks. L. Collins
2/16/99	Slw clmt. States she did not have nuclear coverage for the period of 9/98 through 12/98. States she did see another Dr. at the same office as



Contd.



File Activity Sheet

CLAIM NUMBER		Recorded Statement?	CLAIMANT	INSURED
9434900		<input type="checkbox"/> YES <input type="checkbox"/> NO	Joan D. Tesche	
DATE	ACTIVITY			
2/16/98	Dr. Rubenstein on 1/5/99. Advised her we will again fill on form and explained we need info to assess current status. L. Collins	AMP		
Cont'd	note			
	She also advised her current tx is to see a psychologist and to have trigger point injections.			
2/18/99	Rec'd updt fr. NCM. Dr. in that office only on certain days. NCM to flw 2/24. L. Collins			
3/11/99	Conf. w/ NCM. Need current restrictions. Will contact Clint and advise that Dr. Wolf. Will need to see her before commenting on rest. As of today she does not have an appt per Dr. Wolf's of. L. Collins/g. Jim D.			
3/11/99	Slw Clint. She will set up appt. L. Collins			
5/18/99	Slw Clint. States she had a Dr. appt on 5/13 and has completed our request and dictated a letter to us at that time. NCM to flw 5/19/99. L. Collins			
6/12/99	Rec'd permanent restrictions from ap. Conf. w/ NCM. Will send file for vac assess. L. Collins/H. Kelly			
6-9-99	Vac Review. Own occ only claim. DBS payor ^{through} own occ period and close GEP payor If unable to access			
7/26/99	LTW CCG Letter Sent. L. Collins			
8/24/99	Reviewed her Settlement - not appropriate since the own occ period is not more than 6 months. Grand			

G-39496-G

OWN OCC ONLY
8/20/99 remaining

12/12/01 09:52 KEE WOOD ALLEN & RAHAL, LLP → 717541

NO.230 P002/002

FEB 11 '99 10:40AM OR TO S/R



For All the Commitments You Make

DR. Rubenstein RE: Joan Roche'
 Attention: Stacey Date of birth: 21.155
 Phone: (717)652-3740 Authorization attached
 Fax: (717)652-0832

Necessary information is needed to continue processing your patient's claim for disability benefits. PLEASE HELP.

PLEASE SEE THE INCLUDED JOB ACTIVITY SHEET.

What are the current limitations that prevent return to the patient's own job?

Standing	<u>1/2 - 1 hour</u>	Walking	<u>3 hr/day</u>	Sitting	<u>1/2 hr/day</u>
Lifting	<u>10-20 pounds</u>	Carrying	<u>10-20 pounds</u>	Pushing	<u>— pounds</u>
Pushing	<u>— pounds</u>	Other:	<u>—</u>		

IS MS. ROACHE' @ MMI?
 Are the limits temporary or permanent? Not known

***OBJECTIVE findings MUST BE PROVIDED to support any limitations given.

The above are the patient's self reported limitations. If confirmation is required, suggest independent medical examination by physician or orthopedic surgeon.

Thank you for your information. CNA is the disability insurance carrier and we provide monthly disability benefits to your patient if the objective medical findings support the disability. Your response is valuable to this patient.

Ram GROSSER RN, NCM phone : 800-303-9744x4055 Fax: 407-858-5399

EXHIBIT

Sawchuk 3

02-11-99 10:40

RECEIVED FROM:4078585008

CCC000185

03-09-99 13:31 FAX PAGE ABOVE



File Activity Sheet

CLAIM NUMBER	Recorded Statement? <input type="checkbox"/> YES <input type="checkbox"/> NO	CLAIMANT	INSURED
9434900		Jean D. Tesche	
DATE	ACTIVITY		
10/7/99	Recd atty letter (Clark De Vere) on 9/20 requesting information to prepare for appeal. Sent copy of policy. Copy of medical, initial claim forms, correspondence and voc assessment, along with own occ termination letter. L. Collins		
	Separate letter to ER. L. Collins		
10/25/99	Letter recd fr. atty on 10/12 requesting copies of JD Descr. for voc rev. jobs. Received by faxed Ltr to obtain fr. local library. ER letter sent advising of termination. L. Collins		
11/5/99	Letter Recd fr. atty. wants copies of procedures (outlined in 10/7 letter). Sent copy of letter - L. Collins		
11/12/99	Another ltr fr. atty recd. Requesting info responded to on 11/3. Faxed Ltr. L. Collins		
12/3/99	Recd. appeal req. fr. atty - req. call to confirm. Called atty. See note. Wishes us to assist med. L. Collins		
1/3/2000	Received medical info (letter fr. Dr. Wolf) for appeal.		
1-3-2000	VCA & DRS reviewed voc medical. Voc charge is decision. L. Collins		
1/3/2000	AC recd appeal. Cheryl Sawerhoff		
2/2/00	Appeal upheld & ltr drafted. Cheryl Sawerhoff		

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